

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-11977

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In the Matter of:

GENERAL GROWTH PROPERTIES, INC., et al.

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

May 8, 2009

11:45 AM

B E F O R E:

HON. ALLAN L. GROPPER

U.S. BANKRUPTCY JUDGE

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HEARING re Debtors' Motion for Entry of an Order Pursuant to  
Section 105(a) of the Bankruptcy Code and Bankruptcy Rules  
1015(c) and 9007 Implementing Certain Notice and Case  
Management Procedures

HEARING re Debtors' Motion for Interim and Final Orders  
Pursuant to Sections 105(a), 362(d), 363(b), and 503(b) of the  
Bankruptcy Code and Bankruptcy Rules 4001, 6003, and 6004 for  
Authority to (i)Continue the Debtors' Workers' Compensation  
Programs, General Insurance Programs, and Other Insurance  
Programs; (ii)Pay All Pre-Petition Insurance Obligations in  
Respect Thereof; and (iii) Direct Financial Institutions to  
Honor and Process Checks and Transfers Related to Insurance  
Obligations

HEARING re Debtors' Motion for Entry of an Order Pursuant to  
Sections 105(a), 363(b), 507(a) and 541 of the Bankruptcy Code  
(i)Authorizing Payment of Pre-Petition Taxes and Fees;  
(ii)Authorizing and Directing Financial Institutions to Honor  
and Process Related Electronic Transfers and Checks; and  
(iii)Scheduling a Final Hearing

1  
2 HEARING re Debtors' Motion for Interim and Final Orders

3 (i)Authorizing, But Not Directing, the Debtors to Pay Certain  
4 Pre-Petition Claims of Critical Service Providers; and  
5 (ii)Approving Procedures Related Thereto  
6

7 HEARING re Debtors' Motion for Entry of Interim and Final  
8 Orders Pursuant to Sections 105(a), 363(b), 507(a)(4) and  
9 507(a)(5) of the Bankruptcy Code Authorizing, But Not  
10 Directing, them to (i)Pay Pre-Petition Wages, Salaries,  
11 Employee Benefits and Other Compensation; (ii)Maintain Employee  
12 Benefits Programs and Pay Related Administrative Obligations;  
13 and (iii) Authorize Applicable Banks and Other Financial  
14 Institutions to Receive, Process, Honor and Pay All Checks  
15 Presented for Payment and to Honor All Funds Transfer Requests  
16

17 HEARING re Debtors' Motion, Pursuant to Sections 105(a) and 366  
18 of the Bankruptcy Code, for Entry of An Order (i)Approving  
19 Debtors' Proposed Form of Adequate Assurance; (ii)Resolving  
20 Objections By Utility Companies; and (iii)Prohibiting Utilities  
21 from Altering, Refusing or Discontinuing Service  
22

23 HEARING re Debtors' Motion for Interim and Final Orders to  
24 (i)Honor Tenant Obligations and (ii)Authorize Financial  
25 Institutions to Honor Related Checks and Transfers

1 HEARING re Debtors' Motion for Interim and Final Orders

2 Pursuant to Sections 105(a), 345(b), 363(b) 363(C) and 364(a)

3 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004

4 (A)for Authorization to (i)Continue Using Existing Centralized

5 Cash Management System; (ii)Honor Certain Pre-Petition

6 Obligations Related to the Use of the Cash Management System;

7 and (iii)Maintain Existing Bank Accounts and Business Forms;

8 and (B) for an Extension of Time to Comply with Section 345(b)

9 of the Bankruptcy Code; and (C)Scheduling a Final Hearing

10 HEARING re Debtors' Motion Requesting (I)Entry of (A)Interim

11 and Final Orders (i) Authorizing the Debtors' Use of Cash

12 Collateral and Granting Adequate Protection Therefor Pursuant

13 to Sections 361 and 363 of the Bankruptcy Code and Bankruptcy

14 Rule 4001; and (ii)Modifying the Automatic Stay; and (B)a Final

15 Order Authorizing Borrowing with Priority Over Administrative

16 Expenses and Secured by Liens on Property of the Estates

17 Pursuant to Section 364(c) of the Bankruptcy Code; and

18 (II)Scheduling of a Final Hearing on Each Requested Final Order

19 Transcribed By: Lisa Bar-Leib

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P R O C E E D I N G S

THE COURT: Please be seated. All right. I gather we have standing room only. There is another courtroom where parties can listen. If you're not going to speak today or if you're accompanying another lawyer who is going to speak but you're not going to speak today, I'd ask you to please go into the other courtroom. Anyone in the other courtroom, if you can hear me and you want to speak, you certainly can come back in here. We are going to take some of the first day orders first. Many of them are not objected to. And then we'll proceed to the matters which appear to be more controversial, although for today's purposes, we're going to try to simplify matters. I know this case has resulted in a great deal of interest. There are a lot of lawyers here. But as far as I'm concerned, many, if not all, of the issues that we're dealing today are not particularly complicated. Certainly, there is complexity in the corporate structure and the numbers we have and the amount of money involved. But in terms of the issues that are before me today, I do not view them as being particularly complex or controversial at least as far as we can go today. And I realize that there have been many changes at the last minute. Everyone wants to know exactly what the status of each matter is and, certainly, that's one of the things we're going to be able to accomplish today, I think.

All right. I'll take appearances from the debtors



1 and the committee, the U.S. trustee. I'm somewhat hesitant to  
2 take other appearances. I've never yet not taken appearances  
3 from anyone in the courtroom. I assume you've given your cards  
4 to the reporter. But we can't take all day in the appearance  
5 issue. Perhaps if parties would simply state their name, one  
6 per client. They don't have to identify all their clients.  
7 I'm talking about the lawyers for the secured creditors. I  
8 would invite any secured creditor's lawyer, though, in giving  
9 his or her appearance to tell me if they believe that they're  
10 client is undersecured. In the papers I have, there's one sole  
11 creditor who takes that position. I don't know if anybody  
12 wishes to join them. But don't tell me you're on the cusp.  
13 I've heard that before. But anybody who wishes to join the  
14 unsecured group, we'll give them a seat at the front here, not  
15 necessarily at the unsecured creditors' table, but I would like  
16 to know if they want to take that position for today's  
17 purposes.

18 All right. Let's start with the debtors. You can  
19 give me your appearance where you are seated --

20 MS. GOLDSTEIN: Your Honor, Marcia Goldstein, Weil  
21 Gotshal & Manges on behalf of the debtors. With me today are  
22 my partners and who will appear at the hearing, Gary Holtzer,  
23 Adam Strochak, Penny Reid, and Melanie Gray. And also  
24 representing the debtors today is Anup Sathy from Kirkland &  
25 Ellis.

1 We also have present in the courtroom, Your Honor,  
2 the CEO of General Growth, Adam Metz. We have present the  
3 general counsel, Ron Gern, as well as Mr. Mesterharm from  
4 AlixPartners and Mr. Buckfire from Miller Buckfire who are the  
5 witnesses we have scheduled for today.

6 THE COURT: All right.

7 MR. STAMER: Good morning, Your Honor. For the  
8 record, Michael Stamer from Akin Gump Strauss Hauer & Feld here  
9 on behalf of the committee. I am with my partners, James Savin  
10 and Abid Qureshi.

11 MR. MASUMOTO: Good morning, Your Honor. Brian  
12 Masumoto for the Office of the United States Trustee.

13 THE COURT: All right. Anyone else for unsecured  
14 creditors? All right. For the secured creditors?

15 MR. CROSS: Good morning, Your Honor. Greg Cross  
16 from Venable. I'm here on behalf of CWCapital, JE Roberts --

17 THE COURT: Why don't you just tell me -- unless  
18 there's some need, just multiple lenders to multiple debtors.  
19 Is that correct?

20 MR. CROSS: Forty-one debtors, five to six billion  
21 dollars of value.

22 THE COURT: All right.

23 MR. CROSS: And with me are my partners, Ed Smith and  
24 Carollynn Callari.

25 THE COURT: All right.

1 MR. GOTTESMAN: Good morning, Your Honor. Lawrence  
2 Gottesman, Bryan Cave LLP, on behalf of multiple secured  
3 property level lenders, approximately 3.8 billion dollars in  
4 debt. And with me here are my colleagues, Michelle McMahon and  
5 Keith Aurzada.

6 MR. YUDELL: Good morning, Your Honor. Kenneth  
7 Yudell of Aronauer, re & Yudell, again on behalf of multiple  
8 property level lenders, Centerline Servicing, and with me is my  
9 partner, Joseph Aronauer.

10 MR. VASSER: Good morning, Your Honor. Shmuel Vasser  
11 of Dechert LLP on behalf of three properties, four debtors.  
12 And I have with me Katherine Burroughs who will be speaking in  
13 the hearing with me today.

14 THE COURT: All right.

15 MR. SAMSON: Good morning, Your Honor. Paul Samson  
16 with my partner, Jeffrey Ganz, on behalf of the group referred  
17 to as the 2008 facility lenders which have twenty-four  
18 properties and 1.51 billion of secured debt.

19 THE COURT: Anyone else?

20 MS. BUELL: Yes, Your Honor. Deborah Buell, Cleary  
21 Gottlieb Steen & Hamilton on behalf of Goldman Sachs Mortgage  
22 Company.

23 MR. ZIRINSKY: Good morning, Your Honor. Bruce  
24 Zirinsky, Greenberg Traurig LLP, on behalf of several first  
25 lien property lenders and also on behalf of the mezzanine

1 lenders secured by equity in an entity that owns property.

2 THE COURT: That's an intermediate holding company,  
3 is that right? So you're a lender to the intermediate holding  
4 company and your lien is on the --

5 MR. ZIRINSKY: Stock --

6 THE COURT: -- stock of the property owning company.

7 MR. ZIRINSKY: That's correct, Your Honor.

8 THE COURT: And as I see in the paper, there are  
9 about four mezzanine lenders, I think. There's another one.  
10 We'll get to you, sir. There may be others. All right. If  
11 you're a mezzanine lender, let me know. Thank you, Mr.  
12 Zirinsky. Next?

13 MR. ROSEN: Good morning, Your Honor. Sanford Rosen  
14 for FRM Funding Company.

15 THE COURT: Are you a lender?

16 MR. ROSEN: We are a lender.

17 THE COURT: All right.

18 MS. VAN ROY: Good morning, Judge. Jantra Van Roy,  
19 Zeichner Ellman & Krause LLP representing several mall lenders  
20 specially serviced by Helios AMC.

21 THE COURT: Thank you.

22 MR. SELBST: Good morning, Your Honor. Stephen  
23 Selbst, Herrick, Feinstein LLP. I represent Citicorp North  
24 America. We are the lenders for Oakwood Center and we are the  
25 lender who believes that we are undersecured.

1 THE COURT: Thank you. You are the one that's  
2 identified in the papers --

3 MR. SELBST: Yes. And we so allege.

4 MR. MILLER: Good morning, Your Honor. Brett Miller,  
5 Morrison & Foerster on behalf of the 2006 lending group.

6 MS. REED: Good morning, Your Honor. My name is  
7 Margery Reed. I'm with Duane Morris. I represent Principal  
8 Life Insurance Company which is a --

9 THE COURT: Are you a lender?

10 MS. REED: A lender to multiple debtors.

11 THE COURT: Thank you.

12 MR. ERENS: Good morning, Your Honor. Brad Erens of  
13 Jones Day. I'm here with my partner, Paul Leake. We represent  
14 Pershing Square Capital Management, proposed DIP lenders.

15 THE COURT: The first proposed -- as of this morning.

16 MR. ERENS: That's correct, Your Honor.

17 THE COURT: And as of last night. All right. Thank  
18 you.

19 MR. ROSENBERG: Good morning, Your Honor. Bob  
20 Rosenberg, Latham & Watkins with my partner, James Brandt, on  
21 behalf of Deutsche Bank as the lender for a total of 900  
22 million dollars for two different properties.

23 MR. WEISFELNER: Good morning, Judge. Ed Weisfelner,  
24 together with my partner, Bill Baldiga, from Brown Rudnick  
25 representing the parties as set forth in my 2019 statement

1 which includes Wilmington Trust as indenture trustee for  
2 approximately 1.55 billion dollars worth of GGPLP bonds as well  
3 as an ad hoc consortium of those same bondholders.

4 THE COURT: And the bonds are unsecured?

5 MR. WEISFELNER: They are indeed, Your Honor.

6 THE COURT: All right.

7 MR. SILVERSCHOTZ: Your Honor, Mark Silverschotz,  
8 Reed Smith LLP, on behalf of Northwestern Mutual Life Insurance  
9 Company which is a team secured lender on two of the  
10 properties, the Lansing Mall and the Staten Island Mall.

11 MR. KELSEY: Good morning, Your Honor. Matt Kelsey  
12 with Gibson, Dunn & Crutcher representing Farallon Capital who  
13 was until this morning the DIP lender.

14 MS. VRIS: Your Honor, Jane Vris of Vinson & Elkins  
15 for Ivanhoe Capital, one debtor, one creditor, it's secured.  
16 It's not quite in the managed category. It is a loan secured  
17 by equity by of a nondebtor entity.

18 MR. REILLY: Good morning, Your Honor. Michael  
19 Reilly, Bingham McCutchen, with Carol Levy. We represent  
20 Teachers Insurance. They are a mezzanine lender. They also  
21 hold multiple positions with various debtors and nondebtors.

22 THE COURT: I read something about teachers having  
23 debt outside the bankruptcy. Is that other debt?

24 MR. REILLY: That's correct, Your Honor. We have two  
25 entities that are nondebtors.

1 THE COURT: That are nondebtors. All right.

2 MR. REILLY: Thank you.

3 MR. FOREMAN: Good morning, Your Honor. Michael  
4 Foreman, Dorsey & Whitney for U.S. Bank, a lender under  
5 multiple facilities and the debtors' cash management bank.

6 THE COURT: Right. And you've got a setoff that's  
7 been worked into the papers.

8 MR. FOREMAN: Yes.

9 THE COURT: Or a possible setoff. All right.

10 MR. MEYERS: Good morning, Your Honor. Todd Meyers,  
11 Kilpatrick Stockton, representing multiple property level  
12 lenders whose loans are all being serviced by ING Clarion.

13 THE COURT: All right.

14 MR. ELKINS: Good morning, Your Honor. David Elkins.  
15 I'm here by myself not as a lender but as a -- having an  
16 interest in certain real property that I think may be impacted  
17 by the proposed DIP loan.

18 THE COURT: Are you a lawyer, Mr. Elkins?

19 MR. ELKINS: Once was but not for at least ten years.

20 THE COURT: All right.

21 MR. STEIN: Your Honor, Grant Stein on behalf of  
22 Prudential Insurance Company of America. We have two loans to  
23 the debtors that are direct loans for debtors, one being  
24 Harvard Place for fifty-eight million, another loan to an  
25 entity known as GGP Grand Ville 2 which is a mezzanine loan and

1 then another billion dollars of loans that are involved in  
2 various tranches and securitizations that others will be  
3 speaking to, some of which are loans where debtors are in  
4 bankruptcy, some where they're not.

5 THE COURT: All right. Anyone else in the room?

6 MR. ACME: Bill Acme from Pershing Square Capital  
7 Management, DIP lender as of this morning, the DIP lender as of  
8 a previous proposal.

9 THE COURT: All right. And on the telephone, is  
10 anybody going to speak today? All right. Ms. Goldstein, I  
11 guess we're ready to begin.

12 MS. GOLDSTEIN: Thank you, Your Honor.

13 MR. JEROME: Your Honor?

14 THE COURT: Mr. Jerome?

15 MR. JEROME: Jerome for General Trust. We represent  
16 twenty-one percent of the equity. We're not going to speak to  
17 the secured lenders. But there is a clarification that we  
18 spoke to Weil Gotshal about which hopefully will be put on the  
19 record.

20 THE COURT: All right.

21 MR. METH: Good morning, Your Honor. Richard M.  
22 Meth, Day Pitney LLP. We represent A&K Endowment, Inc. which  
23 is older with regard to certain CSA agreements between Rouse  
24 Company and has certain property interests known as the  
25 Summerlin properties.



1 THE COURT: All right.

2 MS. GOLDSTEIN: Your Honor --

3 THE COURT: Where would you like to begin?

4 MS. GOLDSTEIN: Well, Your Honor, before we begin  
5 with the hearing, I would like to report on the chambers  
6 conference that we had this morning, committee counsel and  
7 debtors' counsel, with Your Honor, which went primarily to the  
8 scheduling and process or procedure for this hearing. As I  
9 think those in the courtroom might figure out given that we  
10 have this morning's DIP lender and Wednesday's DIP lender, we  
11 had filed this morning a revised DIP loan with Pershing Square.  
12 And it's the culmination, frankly, of a very interesting three  
13 weeks since we filed our petitions and made our initial filing  
14 with respect to the first DIP loan with Pershing Square. One  
15 thing I can say, Your Honor, that the debtor is pleased that  
16 the DIP loan initially filed attracted sufficient attention  
17 that we were able to engage in an auction process that led to  
18 the filing of -- I'll call it for purposes of today, even  
19 though there are other lenders in it, the Farallon DIP, which  
20 we filed on Wednesday which we believed to have been a material  
21 improvement over the initial Pershing DIP. After that was  
22 filed, and until late last night, the prospect of yet further  
23 interest and improvements was there and late in the date  
24 yesterday, we received what the debtor believed to be an even  
25 improved DIP loan from Pershing. We have been in communication

1 with the committee and others and we also understand that there  
2 is continuing interest by at least Farallon and maybe others in  
3 seeing if they could even further improve the DIP loan.

4 And, Your Honor, how we have agreed, with the  
5 committee and, based upon the chambers conference, to proceed  
6 is to move forward with our first day motions, move forward  
7 with our motion to use cash collateral. And one point I'd make  
8 on that, Your Honor, is that both the Farallon DIP loan and the  
9 Pershing Square DIP loan negotiations enabled us to achieve  
10 what we perceive to be a significantly improved adequate  
11 protection package for the mortgage lenders. And I won't get  
12 into detail on that now. I'll save that for when we get to  
13 that in the schedule of the hearing today. But I would like to  
14 make clear, particularly for the mortgage lenders, that in any  
15 further discussion of the DIP loans that we would not accept  
16 any provisions that were less favorable to the mortgage lenders  
17 than that which we have already achieved.

18 What we propose then is to move forward, as I said,  
19 with our first day motions, move forward with our cash  
20 management and cash collateral motions and move as far as we  
21 can through the objections but defer the final DIP hearing to a  
22 time subject to your calendar, Your Honor, early next week so  
23 that we can come back and say this is really the final and best  
24 DIP proposal and be ready to address any and all concerns at  
25 that point in time with respect to the DIP loan. We believe

1 the committee agrees with that approach. And given that, I  
2 would like to introduce my partner, Gary Holtzer, who would  
3 proceed with the first day motions that are up for final  
4 hearing. And then I will continue with the cash collateral and  
5 cash management motion.

6 THE COURT: All right. I can -- yes?

7 MR. STAMER: If I might approach the podium just for  
8 a moment, Your Honor. Again, for the record, Michael Stamer  
9 from Akin Gump on behalf of the official committee. So the  
10 record is complete, Your Honor, we filed earlier this morning,  
11 and I believe we have extra copies in the courtroom, a  
12 preliminary objection to the Pershing Square number two  
13 proposed DIP loan. Although I do agree with much of what  
14 debtors' counsel says, we, the committee, do not agree that the  
15 second round with Pershing Square is, in fact, the highest and  
16 best. In connection with our preliminary objection, Your  
17 Honor, as Your Honor knows, we requested an adjournment to  
18 allow this ongoing auction to continue to play itself out and  
19 to try to get people on the same page or, if not, get people  
20 ready to establish for the Court which is, in fact, the highest  
21 and best DIP loan. But the committee is, of course, supportive  
22 of adjourning the DIP motion to early next week. I think we  
23 talked Tuesday or Wednesday. We just need to check calendars.  
24 And that's all I wanted to add, Your Honor.

25 THE COURT: All right. I don't think there's any

1 need to hear from secured lenders about scheduling of the first  
2 day motions that nobody has objected to. I can assure all of  
3 the secured lenders that their interests will be taken into  
4 consideration. There's no way that we could proceed with a DIP  
5 hearing, full DIP hearing, today based upon the state of the  
6 notice given to parties and based upon the state of the record.  
7 But we do have a lot of people who've come a long way today.  
8 And I think we should accomplish as much as we can.

9 I've read a lot of papers. I've seen in the papers a  
10 great deal of hysteria. Maybe that's a little bit overstated  
11 because I am reading pleadings that are written by fine  
12 lawyers. But I think we can clear away some of the cobwebs  
13 that have enveloped this case today and get us to the real  
14 issues. And I presume that you have a real issue to raise with  
15 me, sir.

16 MR. LEAKE: I do, Your Honor. My name is Paul Leake  
17 from Jones Day on behalf of the proposed DIP lender. And I  
18 will take just a couple minutes but I figured it was important  
19 for you --

20 THE COURT: Well, yes. You certainly have a  
21 particular interest in the DIP.

22 MR. LEAKE: I appreciate that, Your Honor. Thank  
23 you -- and the proposed DIP lenders, Pershing Square Capital  
24 Management and affiliated funds. Your Honor, the debtor ran a  
25 process to identify the DIP on the best terms available in the

1 market. Pershing Square participated in that process in  
2 absolute good faith. The debtor made it clear time and time  
3 and time again in this process that today was going to be the  
4 last day. They were not going to adjourn it. They were going  
5 to go forward. No one should have any expectations otherwise  
6 because the debtor needed to get this done. And we thought  
7 that was a good idea, first of all, not complaining about that  
8 all, but we relied absolutely on that process as the debtor was  
9 outlining it.

10 As you know, process is extremely important in these  
11 types of circumstances.

12 THE COURT: I agree completely with you. And are you  
13 telling me that with twenty, thirty, forty lenders in the room  
14 who are affected by the DIP, interested in the DIP, perhaps not  
15 as affected by the DIP as they purport to be. But are you  
16 telling me that they should have ten or fifteen minutes to read  
17 the papers, to understand what's being done at this point and  
18 that I can approve the DIP today?

19 MR. LEAKE: I think that's a very legitimate  
20 question, Your Honor. Absolutely. And let me address that.  
21 Most of the objections that are out there in these multitudes  
22 of pleadings and pieces of paper have nothing to do with the  
23 changes that have occurred with respect to the new proposed DIP  
24 this morning. A lot of -- a lot of the underbrush is going to  
25 be cleared. Was already in the original. Was addressed in

1 some of the changes for what I'll call the bondholder proposed  
2 DIP loan on Tuesday -- or Wednesday, whenever it was filed.  
3 And so the changes that allowed the debtor to absolutely make  
4 the decision that we are the highest and best bid available on  
5 terms most favorable to this estate have nothing to do with the  
6 multitude of objections out there. So I do think this is not a  
7 question of there's a lot of people who need to look at changed  
8 words because those were changed and many of them addressed  
9 with respect to the pleadings that were filed earlier.

10 But what I do want to come back and emphasize, Your  
11 Honor, is that, as I was saying, process is extremely important  
12 to maximizing value for the debtor. Failure of a process this  
13 important will hurt the estate. It always does. We played by  
14 the rules. And I'll tell you, we made dramatic concessions  
15 because we wanted to be the DIP lender in this case. We  
16 decided what it would take to do that. We lived by the rules  
17 and the deadlines set by the debtor and made a lot of  
18 concessions to get to where we are today.

19 One important thing I just want to make perfectly  
20 clear. Our commitment expires today, Your Honor. At this  
21 point, we are not prepared to extend it to accommodate just a  
22 process and a discussion that we were not a part of. We, as I  
23 said, expected the debtor to live by the rules and they could  
24 not have been more clear about if we were going to show up and  
25 we were going to show our best hand and we wanted to get this,

1 we had to do it on the expectation that today we're going  
2 forward and they're not putting it off.

3 I don't know what's going to happen as it is if the  
4 hearing on the DIP is put off. But I would -- I have to say to  
5 you so everybody's aware of it that our commitment expires  
6 today and that we are not at this point prepared to extend that  
7 commitment.

8 The last thing I'd like to say is the committee just  
9 argued for a couple minutes just about. This is something that  
10 they think they might want to object to and they need more time  
11 with respect to that. And they would like to open the process  
12 up a little bit more and see if we can do it even better.  
13 Again, that just goes to exactly the main problem here is that  
14 we had a process and the debtors should live by it. It was the  
15 debtors' decision to put this process in place and to accept  
16 us.

17 THE COURT: Mr. Leake, you have now said four or five  
18 times that the debtors set certain rules. They established the  
19 process. As I assume you know, and knew all along, they then  
20 come to the Court for approval of the DIP. And it should come  
21 to no surprise that the Court had some difficulty in requiring  
22 a DIP to be approved with this number of changes on -- today.  
23 If you want me to approve a DIP today, let's go back to the DIP  
24 that everybody had on the table before this morning. And if  
25 the debtors wish right now for me to put that DIP back on the

1 table then perhaps the parties have adequate notice although  
2 they only had a few days. So when you say the debtors set the  
3 rules, I endorse wholeheartedly the debtors' efforts to set  
4 certain rules and to administer these cases effectively and in  
5 the best interest of all parties. And I understand your  
6 client's desire to be done with it but I set the rules.

7 MR. LEAKE: That you do, Your Honor.

8 THE COURT: I just did.

9 MR. LEAKE: Okay.

10 THE COURT: So even if the debtors got up and said  
11 we're going forward today, my answer is the same. It's too  
12 soon. The committee has to have an opportunity to digest what  
13 you're doing. They threw together a response which, I assume,  
14 is already on their machine. I would think you'd want them to  
15 look at that response again and say, does this really make  
16 sense in light of the terms that your client put on the table.  
17 But if your client decides that it's had enough, we'll do the  
18 best we can. I appreciate the fact that everyone's been  
19 working very hard around the clock. I think it would benefit  
20 everybody to get a good night's sleep. I hope Tuesday is a  
21 convenient date for parties. I'll make myself available. And  
22 I agree this should be done and you should come to a conclusion  
23 here. But we simply cannot with this number of parties and  
24 this many changes, as far as I'm concerned, without anybody's  
25 input. We can't determine the DIP today. We can't decide the



1 DIP today --

2 MR. LEAKE: Thank you, Your Honor.

3 THE COURT: -- with whatever results.

4 MR. ZIRINSKY: Your Honor, may I be heard, too?

5 THE COURT: If it is really necessary on this issue,  
6 yes.

7 MR. ZIRINSKY: It is on this issue, Your Honor. I  
8 don't oppose an adjournment. I think that's a good idea. I  
9 just want to say that there's one thing for a process. There's  
10 another thing for due process. And I think Your Honor is  
11 alluding to due process here.

12 What I would like to suggest is that I have -- to the  
13 best of my knowledge, the mortgagees secured creditors who are  
14 here, many of whom are objecting to the DIP that's on the table  
15 or the one that was on the table before this one came on the  
16 table, there are a number of structural issues that Your Honor  
17 is being asked to consider in considering objections to the  
18 DIP. And I don't know what the revised proposal is that was  
19 teed up for this morning. But I have information, which is  
20 pure hearsay, that there may be other DIP financiers available  
21 which would be structurally different which might obviate the  
22 necessity for the Court having to rule on objections. It might  
23 obviate a lot of the objections of the secured creditors if  
24 structural -- if a different DIP is structured differently so  
25 as not to so egregiously attach to the collateral of the

1       secured creditors that the debtors be asked or maybe suggested  
2       by Your Honor that the debtors involve those secured creditors  
3       who might be interested in having discussions with the debtors  
4       about what the various alternative DIPs might be in an effort  
5       to see if it could be a DIP evolved out of this process which  
6       would obviate a lot of the objections that Your Honor is  
7       otherwise going to have to consider.

8               THE COURT: Well, I think you are correct in several  
9       respects. One, I do think that those aspects that affect the  
10      secured creditors should be isolated and should be looked at  
11      and that those aspects of the matter should be clarified. I  
12      think those are a finite number of issues.

13             MR. ZIRINSKY: I agree.

14             THE COURT: Secondly, I think there should be some  
15      way to organize the secured creditors so that there is some --  
16      there are common issues. I'm not trying to prevent anyone from  
17      getting due process or being heard. But I think that when we  
18      take a break, and we will take a break, I'd like the secured  
19      creditors perhaps to get in one room or an auditorium -- Yankee  
20      stadium may be available. And see if there's some way to get  
21      common ground so that the debtors can deal with thirty or forty  
22      or fifty parties in an effective way. And I think that we can  
23      perhaps start on today.

24             Ms. Goldstein, do you wish to comment on any of this?

25             MS. GOLDSTEIN: Yes, Your Honor. Your Honor, I agree

1 that the secured lenders have a number of issues in common.  
2 Some go directly to the use of cash collateral and those  
3 certainly should move forward today. However, those that are  
4 impacted by the DIP for all, if not -- almost all of those  
5 issues are really common in terms of the DIP loans that either  
6 have been before the Court, the Wednesday loan, I'll call it  
7 that, or this morning's loan are structurally identical insofar  
8 as they affect the secured lenders. And I think that, Your  
9 Honor, we can move forward and put that behind us. And if, as  
10 a result of any further negotiation, there is a structural  
11 change that is viewed as better for the secured lenders, that's  
12 just an improvement for everybody. But, Your Honor, at this  
13 point, everything we have put on the table in terms of the DIP  
14 loan, whether it be Pershing or whether it be Farallon, are  
15 structurally identical insofar as how they impact the secured  
16 lenders and also insofar as they permit adequate protection for  
17 the secured lenders.

18 THE COURT: Why don't we do this? I think we should  
19 go through those orders that we can handle briefly. We can  
20 then get into the issue of cash collateral or at least begin  
21 that. And, Mr. Zirinsky, if you or a group of lenders wish to  
22 identify those issues that affect the secured lenders and that  
23 are directly impacted by the DIP in either structure because I  
24 think the structures as far as the secured lenders are  
25 concerned are very similar. If you can identify those issues

1 and then anyone who wishes to can add to them, at least we'll  
2 know what we can at least start work on today. I don't think  
3 there will be any final determination as to the DIP, but I  
4 think if people are heard, we'll be in a position to get a much  
5 better product by Tuesday -- or whenever. Whenever.

6 All right. Mr. Holtzer? Anyone else have  
7 something --

8 MR. JEROME: Your Honor, just a minor process  
9 question. Can we arrange somehow or other if the debtor could  
10 give us and the proposed DIP lender the papers twenty-four  
11 hours in advance so that we have a chance to digest them and  
12 read them and so I can get some sleep?

13 THE COURT: I'm sure if they can, they will. All  
14 right?

15 MR. JEROME: Thank you.

16 MR. HOLTZER: Thank you, Your Honor. Gary Holtzer,  
17 Weil Gotshal & Manges for the debtors. Your Honor, we filed an  
18 agenda and if Your Honor has a copy of that, per Your Honor's  
19 request, we thought we would try to move through some of the  
20 matters as quickly as possible.

21 THE COURT: All right. Go right ahead.

22 MR. HOLTZER: The first items on the matter, Your  
23 Honor, are adjourned matters. They relate to the retention of  
24 professionals in the matter. We've had extensive discussions  
25 with the U.S. trustee and the creditors' committee about topics

1 involving the engagements. And we've agreed for purposes of  
2 today that we would adjourn those until next week and we will  
3 work with your chambers to get an appropriate date, Your Honor,  
4 as we wanted to handle the other matters, time allowing, that  
5 are on for the calendar.

6 THE COURT: All right.

7 MR. HOLTZER: We've marked those as adjourned, Your  
8 Honor.

9 The second group of items on the calendar are the  
10 items marked as uncontested. We filed certain motions and did  
11 not get objections and we wanted to move to those next, Your  
12 Honor.

13 The first one is the case management motion. We've  
14 had discussions with the U.S. trustee and with counsel for the  
15 creditors' committee. Neither have an objection to that  
16 motion. We have added language to that motion which we  
17 provided in our order to chambers. And that language includes  
18 language to involve counsel to the committee in certain aspects  
19 of the case management procedures.

20 THE COURT: Does anyone wish to be heard? All right.  
21 We'll approve the motion.

22 MR. HOLTZER: Thank you, Your Honor. Your Honor, the  
23 next motion on the calendar is a motion requesting authority to  
24 pay certain insurance amounts and workers' compensation amounts  
25 during the pre-petition period. We filed that motion. We had

1 an interim hearing on April 23rd. There have been no  
2 objections to that motion and, again, we've had extensive  
3 discussions with the U.S. trustee and counsel for the  
4 creditors' committee. And there is no objection to that  
5 motion.

6 THE COURT: Does anyone wish to be heard? All right.  
7 We'll approve that motion.

8 MR. HOLTZER: Thank you, Your Honor. Item number 3,  
9 Your Honor, is a motion requesting permission to pay certain  
10 pre-petition taxes. The various categories have been laid out  
11 in the motion. And again, we've had discussions with the U.S.  
12 trustee and the counsel for the creditors' committee. And  
13 there are no objections to that motion.

14 THE COURT: All right. At an earlier hearing, I  
15 invited any secured lender to let me know if they wish to  
16 object to the debtors' proposal to pay taxes on the secured  
17 properties and no one stood up. Anyone wish to be heard with  
18 regard to this motion? All right. We'll approve the motion.

19 MR. HOLTZER: Thank you, Your Honor.

20 THE COURT: Whoever is on a speaker on the telephone  
21 must pick up. I'm going to ring off on all the phones if  
22 someone doesn't pick up. You'll have to hang up, sir, or  
23 ma'am. Please go ahead, Mr. Holtzer.

24 MR. HOLTZER: Thank you, Your Honor. The next item  
25 on the calendar, item 4 under this heading, is our motion for

1 authorization to pay certain critical service providers.  
2 Again, Your Honor, we've had very extensive discussions with  
3 the U.S. trustee and with the creditors' committee and there  
4 had not been an objection to this motion. We had interim  
5 relief from Your Honor for certain important ones prior to this  
6 hearing date. And we're ready for the next phase.

7 THE COURT: Does anyone wish to be heard?

8 MR. STAMER: Your Honor, just very briefly.  
9 Michael -- you can stay there, Gary.

10 MR. HOLTZER: Yep.

11 MR. STAMER: Michael Stamer for the committee, Your  
12 Honor. We did, as Mr. Holtzer represented, have significant  
13 discussions about the critical vendor motion -- critical  
14 provider motion. The economics are such that, I believe, on  
15 the interim hearing, it was a million seven that was going to  
16 be paid. And through the final hearing, it was fifteen million  
17 dollars that would be paid. Based on the information provided  
18 to us and the fact that this is somewhere in the neighborhood  
19 of a thirty billion dollar capital structure, we thought that  
20 was not unreasonable. And we were persuaded that it made  
21 sense. To the extent the debtors need to deviate from their  
22 plans with respect to critical vendors, they promised to keep  
23 the committee in the loop and we'll have back and forth as is  
24 necessary.

25 THE COURT: I gather you know what payments they

1 propose to make?

2 MR. STAMER: Your Honor, we do.

3 THE COURT: And you also know the procedures that  
4 they propose to put in place to get creditor other concessions  
5 or benefits from the vendees, the so-called critical vendees.

6 MR. STAMER: Your Honor, we do.

7 THE COURT: All right. Does anyone wish to be heard?  
8 All right. I am, as those who were here at the earlier hearing  
9 know I'm very hesitant to approve critical vendor orders of any  
10 type. But since the committee has had a chance to review the  
11 proposal, it is a de minimis almost in the context of these  
12 cases and the twenty-day period in Rule 6003 has gone by. I'll  
13 approve the motion. Thank you.

14 MR. HOLTZER: Thank you, Your Honor. The next item  
15 up on the calendar is the motion for approval of employee wages  
16 and benefits. Your Honor, with respect to this motion, we've  
17 again had extensive discussions with the committee and the U.S.  
18 trustee. We filed a supplement to our original motion asking  
19 for some incremental relief in addition to what was included in  
20 the first day motion. That relief we've also discussed  
21 extensively with the U.S. trustee and the creditors' committee.  
22 I believe that the U.S. trustee has an objection to a portion  
23 of that relief insofar as we are asking for relief to go beyond  
24 the statutory cap with a few employees as we've laid out in the  
25 supplement to the motion. We are prepared, if need be, to put



1 on a proffer of Mr. Mesterharm from AlixPartners with respect  
2 to the small and very modest amounts that we are going beyond  
3 the statutory cap in the supplement to those employees if Your  
4 Honor so requests. The U.S. trustee may like to be heard on  
5 this. The creditors' committee has agreed and does not object  
6 to the entry of the order.

7 Counsel for the creditors' committee asked that we  
8 note on the record that the motion calls out as a notice to  
9 parties one of our benefit plans known as the CVA plan. It is  
10 one of the companies benefit plans that provides for incentive  
11 compensation. That incentive compensation is not due to be  
12 paid until next year so we are not seeking authority today and  
13 may not seek authority to make those payments. However, the  
14 counsel for the creditors' committee asked that we at least  
15 place on the record that we are not seeking authority today.  
16 We will have discussions with the creditors' committee about  
17 that plan. And if we need to come back to the Court for that  
18 plan, we will.

19 THE COURT: Well, maybe the case will be over before  
20 next year.

21 MR. HOLTZER: Maybe.

22 THE COURT: All right.

23 MR. STAMER: Your Honor, if I could be heard just  
24 very briefly. The committee has been in active dialogue with  
25 the company on this motion. Again, the economics in summary

1 are approximately six million dollars to be paid to employees  
2 for pre-petition unpaid obligations. An additional  
3 approximately 180,000 dollars in the aggregate to, I think, who  
4 the company has described as key producers. The committee  
5 realizes that the employees of this enterprise are valuable  
6 assets and we believe that it is necessary and appropriate to  
7 make these payments. We're satisfied that it is important to  
8 allow the company to continue its reorganization efforts.

9 In addition, Your Honor, as part of this motion,  
10 there was an agreement by the two most senior executives --

11 UNIDENTIFIED SPEAKER (TELEPHONICALLY): Hello?

12 THE COURT: You'll have to pick up if you're on the  
13 telephone, please. Go ahead.

14 MR. STAMER: There was -- the two senior most  
15 executives of the company whose compensation I won't go into in  
16 detail but they're paid a bi-weekly compensation and a  
17 quarterly additional form of compensation. For purposes of the  
18 payments that were due the quarter ending, I think, May 2nd,  
19 the two senior executives have agreed to defer those payments.  
20 Your Honor, like in any bankruptcy case, large or small, there  
21 will be a discussion between the company and the committee  
22 about appropriate compensation and incentivizing rank and file  
23 employees and senior executive employees. And we are  
24 scheduling a meeting with the company in the next week or so  
25 and that will be on the agenda.

1           The only issue that we disagree on with respect to  
2           this motion, and what we've effectively done is we've kicked  
3           that can down the road, is the CVA plan. Your Honor, that is a  
4           discretionary bonus plan that the company has indicated they  
5           think is part of their ordinary course of business. We're not  
6           so sure, Judge. But, again, it doesn't kick in until sometime  
7           early next year. The company has agreed they will give us  
8           advanced notice of no less than fifteen business days before  
9           any payment is made under that plan. And with that  
10          accommodation, Your Honor, the committee has no objection to  
11          the relief that's being sought in this motion.

12                 THE COURT: All right. Mr. Masumoto?

13                 MR. MASUMOTO: Your Honor, if I may?

14                 THE COURT: Just come to the microphone, please, so  
15          that we're certain to pick up the passage.

16                 MR. MASUMOTO: Good morning, Your Honor. Brian  
17          Masumoto for the Office of the United States Trustee. As  
18          indicated by counsel, unfortunately, our office does take a  
19          position with respect to the amount of the payments that exceed  
20          the statutory cap under 507(a)(4). In this instance, we were  
21          provided with some additional information regarding these  
22          employees which indicate, essentially, ten employees will  
23          receive amounts over the 10,950 dollar cap, amounts that go up  
24          as high as 14,500 dollars. Based upon the information  
25          provided, we've been advised that none of these employees are

1 insiders. However, six of the ten employees receive annual  
2 salaries of in excess -- of 125,000 or more. And accordingly,  
3 these aren't the typical rank and file employees who are being  
4 allowed to receive payments in excess of statutory cap.

5 As Your Honor knows, in the recent bankruptcy format,  
6 the amount of priority -- the priority claim under 507(a)(4)  
7 was fairly significantly increased. And in this context, we  
8 believe that that cap should serve as a limitation on the  
9 amounts that are paid to the employees, particularly, those who  
10 are highly compensated.

11 Accordingly, we do oppose the amounts in excess of  
12 the amount notwithstanding the aggregate total as fairly  
13 modest. Again, with respect to the individuals, there is also  
14 an issue regarding the nature of the amounts that go over the  
15 cap. My understanding is that the amounts are attributable to  
16 commission payments. And I believe the debtor has taken the  
17 position that these commissions were technically in compliance  
18 with 507(a)(4) by virtue of essentially being credited with  
19 being -- within the 180 days, although, arguably, the issue is  
20 as to whether or not these compensations were earned over that  
21 period may be somewhat in question.

22 Based on these factors, again, Your Honor, we  
23 still -- our office attempts to maintain a fairly consistent  
24 and uniform policy that the statutory cap should be observed.  
25 All right. Thank you.

1 THE COURT: Thank you. Anyone else? Well, I have  
2 consistently and uniformly overruled the objection of the U.S.  
3 trustee on the point. I appreciate the position but I don't  
4 believe that the statutory cap amount is the only -- the fact  
5 that these payments are within the statutory priority is the  
6 only reason why we approve to employees at the beginning of the  
7 case. There are many reasons to do that especially in a case  
8 where we're making some, albeit modest in the context of this  
9 case, payments to critical vendors.

10 It also seems to me that we shouldn't encourage  
11 parties to file on a particular day or during a wage period or  
12 at the beginning or at the end of a wage period by having an  
13 absolute limit on the statutory cap amount especially where  
14 they're in the nature of commissions and, in effect, the  
15 agreement, even if there's no formal agreement with the  
16 employee is being observed. Nothing in the motion implicates  
17 Section 503(c) of the Bankruptcy Code which does apply in these  
18 cases and, therefore, I'll approve the motion. Thank you.

19 MR. HOLTZER: Thank you, Your Honor. We now turn,  
20 Your Honor, to the utility motion. And I will turn the podium  
21 over to my partner, Melanie Gray.

22 MS. GRAY: Good afternoon, Your Honor. Melanie Gray  
23 with Weil Gotshal & Manges. I'm happy to report that despite  
24 the number of objections to the utilities motion, we have been  
25 able to work diligently to resolve all but two. And I will

1 announce the status of the two that have not been resolved.  
2 We've also made two revisions to the order based upon  
3 negotiations with the committee which I hope will mean that the  
4 proposed order is now satisfactory to the Court as well.

5 Your Honor, we've resolved all of the objections  
6 except for one with the Trigen entities. And with regard to  
7 those, Your Honor, first, Trigen provides certain utilities to  
8 the Grand Canal Shoppes in Las Vegas. And we have worked with  
9 them to reach agreement with regard to the accounts and the  
10 pre-petition amounts due. We believe that we will have  
11 agreement with regard to the amount of adequate assurance once  
12 both parties are able to reconcile those accounts. And so, we  
13 ask, with regard to Trigen, that the motion -- that they will  
14 be excluded from this order. And we reserve our rights to come  
15 back if there is a dispute with regard to Trigen and the  
16 adequate assurance that they request and that we oppose. And  
17 so, we would set that for a subsequent date.

18 THE COURT: You don't want a date today, though?

19 MS. GRAY: No, Your Honor. I believe that it would  
20 be appropriate to allow the parties to work through these  
21 issues.

22 THE COURT: All right.

23 MS. GRAY: And Mr. Conlan of Gibbons for Trigen may  
24 be on the phone. He may want to be heard with regard to the  
25 setting of a subsequent hearing.

1 THE COURT: All right.

2 MR. CONLAN (TELEPHONICALLY): Good morning, Your  
3 Honor. Mark Conlan of Gibbons and endorse for counsel as  
4 reported to the Court.

5 THE COURT: All right. Then we'll deal with it in a  
6 subsequent order if necessary.

7 MS. GRAY: Thank you. And, Your Honor, I will just  
8 say that the parties had agreed that during this period of time  
9 where we work out the adequate assurance that Trigen has agreed  
10 to continue to provide the utility services to the debtors.

11 The second objection, Your Honor -- the resolution of  
12 that is really a withdrawal of the motion as to two parties who  
13 are listed as utilities. And those are Constellation  
14 NewEnergy, Inc. and Constellation NewEnergy-Gas Division.

15 THE COURT: That's in your papers.

16 MS. GRAY: Yes, Your Honor.

17 THE COURT: All right.

18 MS. GRAY: They were listed and, as you can imagine,  
19 based upon the number of utilities and accounts, we went back  
20 and looked at those agreements when we received the objection  
21 from these two Constellation entities. And those, Your Honor,  
22 are indeed forward contracts as opposed to your normal utility  
23 contracts. And we agree with Constellation's position that  
24 they should not be considered and are not utilities for  
25 purposes of 366 in this case. So the debtors have withdrawn or

1 are seeking to withdraw the motion with prejudice as to those  
2 two entities.

3 THE COURT: All right.

4 MS. GRAY: However, even though we are withdrawing  
5 the objection, we agree that nothing prejudices the parties'  
6 rights with regard to these contracts in any subsequent dispute  
7 or issue that may come before the Court.

8 THE COURT: All right. Thank you. Does anyone wish  
9 to be heard. Well, then, we'll enter an appropriate --

10 MR. ETKIN: Your Honor?

11 THE COURT: Yes?

12 MR. ETKIN: Just briefly. Michael Etkin, Lowenstein  
13 Sandler on behalf of the various Constellation entities. We  
14 have not seen the latest --

15 THE COURT: You'll see it. You'll see it.

16 MR. ETKIN: Just want to make sure we see it.

17 THE COURT: You'll see it.

18 MR. ETKIN: Thank you.

19 MS. GRAY: We'll be --

20 THE COURT: I think everyone should have a chance to  
21 see the final order before it's submitted.

22 MS. GRAY: Yes.

23 THE COURT: If there's any issue, you can be heard by  
24 telephone but I'm sure there won't be.

25 MS. GRAY: And, Your Honor, if I may just note two



1 other revisions to the order, for purposes of the record,  
2 working with the committee, we have reached an agreement with  
3 regard to notice provisions to the committee in connection with  
4 any settlements as to adequate protection that are reached --  
5 or adequate assurance that are reached with utility providers.  
6 And that is set forth in the revised order. And, likewise,  
7 Your Honor, we took guidance from the utility order that was  
8 entered in the Tronocs (ph.) case. And we have provided in the  
9 order that nothing in the order bars a utility from seeking  
10 additional adequate assurance in these cases if circumstances  
11 change. And, of course, the debtors reserve their right to  
12 object if such additional adequate assurance is sought.

13 THE COURT: Well, hopefully, that provision will  
14 lower the decibel level in the next case. If that were  
15 possible, I think utilities could save a few dollars in filing  
16 their objections and debtors' counsel could get a little more  
17 sleep.

18 But, thank you. I thank all parties for having  
19 gotten as far as they have on this issue. Does anyone wish to  
20 be heard? Well then, we'll enter an appropriate order.

21 MS. GRAY: Thank you, Your Honor. We'll turn it back  
22 to Mr. Holtzer.

23 MR. HOLTZER: Actually, Your Honor, looking at the  
24 rest of the calendar for today, we'd like to begin our motions  
25 on adequate protection, cash collateral, cash management and

1 the tenant obligations motion which we're going to present  
2 together. And Ms. Goldstein now will begin that presentation.

3 THE COURT: All right.

4 MS. GOLDSTEIN: Thank you, Your Honor. Your Honor,  
5 as our papers indicate, we are seeking to use cash collateral  
6 pursuant to Section 363(c)(2) and 363(e) of the Bankruptcy  
7 Code. Under Section 363(c)(2), the Bankruptcy Code allows the  
8 debtor to use cash collateral absent consent after notice and a  
9 hearing and approval by the Court. Section 363(e) allows the  
10 Court to condition the use of cash collateral by the debtor as  
11 may be necessary to provide adequate protection. And although  
12 the Bankruptcy Code identifies certain forms of adequate  
13 protection, in Section 361, it is by no means intended to  
14 provide an exhaustive list of what constitutes adequate  
15 protection.

16 Your Honor, you know, since the initial hearing on  
17 the use of cash collateral on the first day of this case, we  
18 have spoken to a number of the counsel for the mortgage  
19 lenders. We have seen their objections which were filed before  
20 we amended our DIP loan. And we believe, particularly, through  
21 the DIP loan negotiation process that we have made very  
22 significant strides in addressing the chief adequate protection  
23 objections of the secured lenders. So I would like to  
24 summarize the adequate protection package that we now propose.

25 Replacement liens. The first adequate protection

1 proposal provided for a replacement lien on intercompany claims  
2 that a specific debtor would receive on account of the  
3 difference between the cash that was swept up to the parent's  
4 central cash management system and the amounts that came back  
5 down to the projects to pay the expenses of the project. And  
6 that net cash would become an intercompany claim. And the  
7 proposal was to provide a lien on that intercompany claim.  
8 We're not taking away that proposal, Your Honor, but we heard  
9 from the lenders and, as I'm sure you read in their objections,  
10 that they felt that that was inadequate. And their primary  
11 objection was well, we don't think that is as strong as you  
12 suggest because the DIP lender would have a lien on all the  
13 cash in the main operating account.

14 Your Honor, we felt that this was a point that we  
15 could take up with the DIP lenders and achieve the improvement,  
16 particularly on that point, in terms of adequate protection.  
17 And we were able to do so. So that we are now proposing that  
18 the mortgage lenders would get a lien on the main operating  
19 account which is senior to the lien of the DIP lender. And  
20 that lien would be to the extent of the lesser of the aggregate  
21 diminution in value which is designed to protect the secured  
22 lender from a decrease in value of their interest in the  
23 collateral and the post-petition net positive balance of the  
24 intercompany claim.

25 Your Honor, it's quite possible that the intercompany

1 claim is greater in amount than what the diminution is. I  
2 could also posit a scenario, particularly for an undersecured  
3 creditor, where the diminution might be the entirety of the net  
4 intercompany claim. So, Your Honor, I'm not suggesting that  
5 that is the case. But by proposing this lien to be the lesser  
6 of those two, we believe that we have appropriately covered the  
7 requirement for adequate protection of taking the cash out of  
8 the projects, sweeping it, as the debtor always had done, to  
9 the centralized cash management system and using the cash back  
10 at the project level.

11 This, Your Honor, we believe satisfies and moots the  
12 objection of the mortgage lenders that the DIP lenders were, in  
13 effect, priming the holders of the adequate protection  
14 replacement liens because the DIP lender in the first iteration  
15 of the DIP loan had a first lien on that main operating  
16 account.

17 We also will be giving a -- Your Honor, may I have  
18 one second? We also, Your Honor, will be granting to the  
19 mortgage lenders a second lien on what we call the Goldman  
20 properties. As I'm sure everyone here is aware, the proposed  
21 DIP loan would pay off what we call the Goldman loan -- it is  
22 secured by twenty-seven properties -- in order to provide a  
23 first lien to the DIP lender. Your Honor, when we proceed with  
24 our testimony, we will show that the value of the Goldman  
25 properties is such that it, one, provided a great deal more

1 liquidity by having a new lender on it. But also, it's of such  
2 value that it is a valuable second lien to the mortgage  
3 lenders. Frankly, Your Honor, between the first lien on the  
4 main operating account and a second lien on the Goldman  
5 properties, we think this is a loan without anything else. I  
6 would consider uber-adequate protection.

7 Now, Your Honor, of course, we will also give  
8 superpriority claims under Section 503(b) and 507(b) of the  
9 Bankruptcy Code to the mortgage lenders which are senior to the  
10 superpriority claims of the DIP lenders but to the same extent  
11 as they would have a lien on the main operating account.  
12 Again, Your Honor, we're trying to protect the diminution in  
13 value of the secured creditors' interest in the collateral as  
14 is required from an adequate protection standpoint.

15 In addition, as we had originally proposed, we still  
16 propose to pay pre- and post-petition interest at the  
17 non-default contract rate set forth in the lenders'  
18 documentation as further adequate protection. Your Honor, of  
19 course, we would reserve the application of those payments. We  
20 have one lender who has conceded that it is undersecured. We  
21 are still proposing to make payments equal to the non-default  
22 contract rate interest. But in the case of an undersecured  
23 creditor, that would not be interest or applied as interest,  
24 rather it would be applied against principal. So we believe  
25 that that satisfies adequate protection under that formula both

1 for oversecured creditors and undersecured creditors.

2 Your Honor, in addition, the debtors will continue to  
3 operate the properties in the ordinary course of business and  
4 pay in the ordinary course of business the post-petition  
5 operation expenses, the maintenance expenses to properties,  
6 taxes on the properties, as they have done in the past.

7 One additional item of new adequate protection that  
8 we are proposing, Your Honor, is related to our motion with  
9 respect to tenant practices. A number of the secured lenders  
10 have objected to that motion not because they do not want the  
11 debtors to continue to engage in normal lease amendments,  
12 normal practices with their tenants because, obviously,  
13 maintaining relationship with the tenants and accommodating the  
14 tenants is in the best interest not only of General Growth but  
15 also in the best interest of the mortgage lenders at the mall  
16 level. So they don't object to the order that we're requesting  
17 per se. However, they did not want to find that they did not  
18 have the kinds of consent rights with respect to leasing that  
19 they had pre-petition.

20 And so, we believe that actually satisfying that  
21 objection is really another form of adequate protection. And  
22 so, we are proposing, as a form of adequate protection, that  
23 the debtors will comply with pre-default restrictions contained  
24 in the mortgage documents on the ability of the debtors to  
25 enter, amend and terminate tenant leases or reciprocal easement

1 agreements. If the debtors' credit documentation with the  
2 lenders requires the lenders' consent to enter into a post-  
3 petition lease or reciprocal easement agreement or to amend  
4 pre-petition leases of reciprocal easements, the debtors will  
5 not enter into these agreements without the lenders' consent  
6 provided, Your Honor -- we expect this to be a cooperative two-  
7 way street -- that the lenders give the debtors the  
8 subordination and nondisturbance agreements or consent and  
9 subordination agreements that would otherwise be required in  
10 these transactions in the ordinary course.

11 Last but not least, Your Honor, the debtors will  
12 provide the lenders with financial reporting that was required  
13 under their documentation pre-petition and pre-default. And  
14 so, we will adhere to what was originally in the loan  
15 documentation with respect to reporting as we had always done  
16 in the pre-default scenario.

17 Your Honor, we believe the adequate protection  
18 package is very comprehensive. I called it uber-adequate  
19 protection. I believe that. And it really covers a rainbow of  
20 forms of adequate protection. And so, we're comfortable that  
21 we can provide this adequate protection consistent with the  
22 best interest of both the debtors and the mortgage lenders.  
23 And we were pleased, frankly, Your Honor, that the competitive  
24 DIP negotiations enabled us to achieve both the first lien on  
25 the main operating account and the grant of a second lien on

1 the Goldman properties that we believe are true enhancements to  
2 the adequate protection package.

3 Your Honor, I would like to make some additional  
4 remarks about the nature of the -- what I would consider the  
5 remaining, maybe, nonadequate protection objections. And then,  
6 my proposal would be that my partner, Adam Storchak, put on our  
7 evidence. And then I would further propose that at the  
8 conclusion of our case that the secured lenders have their  
9 opportunity to assert their responses and make their main case  
10 on their objections.

11 So if I can continue to address the objections and  
12 move forward in that manner, I would like to do so.

13 THE COURT: All right. If you -- address the  
14 objections rather briefly --

15 MS. GOLDSTEIN: I will, Your Honor.

16 THE COURT: How much evidence do you have? How long  
17 do you think your witness --

18 MS. GOLDSTEIN: Well, Your Honor, since --

19 THE COURT: Who do you propose to call and how long  
20 do you think it will be? Or shall I ask Mr. Storchak?

21 MS. GOLDSTEIN: Well, Your Honor, I think you could  
22 ask Mr. Storchak the length of the testimony --

23 THE COURT: Yes.

24 MS. GOLDSTEIN: -- that we would propose on Mr.  
25 Mesterharm. But I think I will be brief and really just give



1 an overview of our position --

2 THE COURT: All right.

3 MS. GOLDSTEIN: -- on the objections. We had  
4 intended to call Mr. Buckfire in connection with the proposed  
5 DIP loan. So we will not put him forth today but will do so  
6 when we proceed with the DIP loan.

7 THE COURT: All right.

8 MS. GOLDSTEIN: How long?

9 MR. STROCHAK: To the left of the testimony, Your  
10 Honor, Mr. Mesterharm and I anticipate thirty to forty-five  
11 minutes on direct. We do have a second witness who I think is  
12 tentative. We have an appraisal issue that Mr. Mesterharm is  
13 going to rely on for purposes of his financial analysis. I  
14 suppose if somebody objects, we do have the appraiser here to  
15 testify if necessary. But we're hopeful that it'll be  
16 unnecessary.

17 THE COURT: All right.

18 MR. STROCHAK: In any event, it would be quick.

19 THE COURT: I'm not trying to -- this is not a  
20 contest on endurance. So at some point, we're going to take a  
21 break. I hope the lenders, the secured lenders, can use that  
22 time to get a little bit organized and to discuss the issues  
23 that, for example, Mr. Zirinsky raised as to the common  
24 matters. But we can take that break now or we can -- or after  
25 Ms. Goldstein has completed her remarks. Or we can take the

1 testimony -- maybe we should have the testimony first 'cause  
2 then maybe your thirty minute projection will be more accurate.

3 MR. STROCHAK: That'll really be up to Mr.  
4 Mesterharm. I was going to suggest we break now --

5 THE COURT: All right.

6 MR. STROCHAK: -- just because thirty minutes always  
7 stretches to forty-five and we're pushing close to 2:00.

8 MS. GOLDSTEIN: And, Your Honor --

9 MR. STROCHAK: But it's really at your discretion,  
10 Your Honor.

11 MS. GOLDSTEIN: And, Your Honor --

12 THE COURT: Well, maybe you can take the time to  
13 shorten the -- I'll hear from the -- if the parties have  
14 particular issues that can be taken up at this point, they may.  
15 I'll take -- but, Ms. Goldstein, you want to finish your  
16 remarks first?

17 MS. GOLDSTEIN: Yes, Your Honor.

18 THE COURT: THE COURT: All right. Why don't you do  
19 that and then --

20 MS. GOLDSTEIN: I will do that and I will try to  
21 shorten them.

22 THE COURT: -- parties who need to be heard can  
23 collect their thoughts.

24 MS. GOLDSTEIN: Your Honor, I would like to present a  
25 brief summary of the objections and our overview of what we

1 will show in response.

2 On the adequate protection point, I do believe we've  
3 addressed the chief objections of the mortgage lenders,  
4 although some of them continue to seek, as adequate protection,  
5 the default rate of interest, the payment of attorneys' fees,  
6 or the payment of principal. Some of them have also raised  
7 issues about the inter-company claims being difficult to value,  
8 but I do think that our proposal of the lien on the main  
9 operating account may have eliminated that objection.

10 A number of the secured lenders have argued that the  
11 cash collateral should only be used for the particular property  
12 that generated the cash. And essentially, Your Honor, they're  
13 suggesting that cash cannot be upstreamed through the central  
14 cash management system and utilized by the parent companies to  
15 operate the business.

16 There has been a suggestion that permitting the use  
17 of cash collateral and presumably adopting and continuing the  
18 centralized cash management system results in a de facto  
19 substantive consolidation of the debtors. There's a suggestion  
20 that notwithstanding that we are seeking the Court's approval  
21 to use cash collateral, that nonetheless, the debtors should be  
22 required to segregate the cash collateral as adequate  
23 protection. It seems inconsistent with the use. And there's  
24 also been a suggestion that the debtors' mezzanine lenders  
25 should receive adequate protection for the use of cash

1 collateral. Your Honor, we're not addressing any of the DIP  
2 issues with respect to these, just the cash collateral.

3 So Your Honor, we will establish through the  
4 testimony of Mr. Mesterharm that the adequate protection  
5 package to be provided to the property lenders is more than  
6 sufficient to provide adequate protection to the lenders for  
7 any diminution in their collateral. And again, I don't want to  
8 repeat myself too much, but this is a significant increase in  
9 the adequate protection previously proposed.

10 We will also show, Your Honor, that the debtors are  
11 able to track inter-company claims, such that at any point the  
12 debtors will be able to assess the value of any particular  
13 inter-company claims. And therefore, the mortgage lenders will  
14 be able to make those assessments as well.

15 I'd like to address some of the legal issues,  
16 particularly -- well, Your Honor, I may not limit myself, so I  
17 won't limit to a few, but I'll try to keep them brief.

18 THE COURT: Do you want to save that for a reply so  
19 that we find out, as best we can, what issues are still on the  
20 table?

21 MS. GOLDSTEIN: Your Honor, I'd be happy to do that.  
22 Maybe that would shorten the hearing. But we would like an  
23 opportunity to respond --

24 THE COURT: I certainly would like --

25 MS. GOLDSTEIN: -- to those issues that I view as

1 legal issues.

2 THE COURT: I'd like to see the lenders get in one  
3 room and -- would you sit down, please? I'd like to see the  
4 lenders get in one room and at least try to organize, if they  
5 can, a response which is not repetitive and where each party  
6 has an opportunity to be heard. And we'll go till midnight if  
7 we have to, but I do think that the issues, for the most part,  
8 are fairly uniform. And the issues are really not that  
9 complicated. I mean, this is not rocket science; this is cash  
10 collateral and adequate protection. It's a big case. There  
11 are a lot of debtors. But if we look on it debtor by debtor,  
12 and I realize that there is an issue in not, but if we look on  
13 it debtor by debtor, the issues, at least in my mind, are not  
14 all that complicated.

15 Now, you, sir, had a question that you wanted to  
16 raise before lunch. Yes, come to the microphone if you want to  
17 be sure to get on the written record.

18 MR. VASSER: Shmuel Vasser for Tysons Galleria, Ala  
19 Moana, and Maine Mall lenders. Two very quick comments. One  
20 is with respect to the testimony, we should go ahead with the  
21 testimony. I just want to tell Your Honor that about ten days  
22 ago I asked the debtors to provide the testimony and the  
23 evidence that they intend to rely on at this hearing. I got it  
24 this morning at 1 a.m. in the morning. So to the extent we  
25 will need some follow-up --

1 THE COURT: Well, I'm sure you got it long before  
2 some other parties. Thank you. Next comment?

3 MR. CROSS: Your Honor, Greg Cross, Venable. I just  
4 wanted to respond to the fact that the secured lenders have  
5 coordinated. There's approximately twelve billion dollars of  
6 secured debt sitting at the table. We've been in active  
7 communication. We do have fairly centralized lists. And  
8 that's the fashion that we intend to proceed.

9 THE COURT: Very good.

10 MR. CROSS: We didn't want the Court to be misled  
11 that we were not prepared and focused with centralized  
12 objections.

13 THE COURT: I know that many of you represent a great  
14 number of lenders. The organization has not been apparent to  
15 me, and I'm delighted to hear it. And I'll invite you after  
16 lunch to tell me exactly where we are in terms of trying to  
17 coordinate responses. I have thirty separate responses down --  
18 at least, downstairs. And no one has to feel that they're not  
19 going to be heard even though there are many responses.  
20 Everyone has an opportunity. Everyone has a right to be heard.  
21 So don't take my comments in the wrong fashion. My comments,  
22 though, are: I think everyone would benefit from more rather  
23 than less coordination where there are uniform issues. Then I  
24 can deal with the issues. There are issues that are going to  
25 come up. We're going to have to schedule some of them today so

1 I can deal with them. And I'll deal with them on a party by  
2 party basis. But I don't want the complexity of these cases  
3 also to obscure what I suggest are some pretty simple issues  
4 and pretty simple and direct application of well-known  
5 bankruptcy principles to a complicated inter-related situation.

6 MR. CROSS: All right. I think you will find we  
7 agree with that.

8 THE COURT: Very good. I'll look forward to hearing  
9 that. Now, you're going to tell me different.

10 MS. GOLDSTEIN: I'm actually going to just second  
11 what Your Honor --

12 THE COURT: Well, you don't need to. The whole idea  
13 of coordination is that you don't have to.

14 MR. GOTTESMAN: Well, amplify Your Honor. You're  
15 right, this is a large case. There are many more zeros than  
16 certainly may of us are used to.

17 THE COURT: Well, reading the paper these days we're  
18 getting used to more and more zeros.

19 MR. GOTTESMAN: I guess a billion is the old million  
20 or vice versa, I'm not sure how it should go, Your Honor. But  
21 in that respect, you know, whether the case is about a million  
22 dollars or a billion or thirty billion, the normal process that  
23 we would have expected, and I just want to clarify the record  
24 for this, Your Honor, is that between the interim, the first  
25 day hearings and today, that the debtors' counsel would have

1 sat in a room, at least with the primary group -- and as Mr.  
2 Cross pointed out, there's approximately twelve, maybe even a  
3 little bit more, billion dollars literally in the four corners  
4 of this table, excluding committee counsel -- and at least made  
5 an attempt to reach common ground on some of these issues. In  
6 fact, the debtors represented the very first day, that  
7 afternoon, Your Honor, they would do so. At the continued  
8 second day, we've been ready, willing, and able, we've  
9 obviously been in communication on other issues in terms of  
10 some of the logistical matters with regard to these cases, Your  
11 Honor.

12 And so I don't want to have the impression that  
13 there's a lack of coordination or a lack of desire to do what  
14 we would do in any other case, which is in fact show up with a  
15 consensual resolution at the final hearing. It hasn't happened  
16 because there hasn't been the dialogue that you would normally  
17 expect in a case, perhaps, with less zeros attached to it. And  
18 the fact that there are more zeros -- and that's the only thing  
19 I want to amplify or second in terms of Your Honor's remarks --  
20 doesn't change that fundamental process that we would expect in  
21 the bankruptcy process.

22 THE COURT: I think that those are very constructive  
23 comments and I think we're all going to have to deal with not  
24 only the zeros but the number of separate matters. I  
25 certainly, sitting up here, am going to have to deal with those



1 issues and they'll be dealt with. And that should be an issue  
2 for this afternoon. But why don't we get as many parties to  
3 get their lunch in if they can without too much interference by  
4 the marshals downstairs, which I have absolutely no control  
5 over, and see if there can't be some dialogue. But what we're  
6 doing today, I think, is not rocket science.

7 MR. GOTTESMAN: I think that's fundamentally correct,  
8 Your Honor, but the concern I have is since there's been  
9 essentially zero dialogue, that literally by the time we all  
10 manage to pile out of the building and allow time to get  
11 through security downstairs, there's still not time for that.  
12 We've heard that there is not going to be a hearing, at least a  
13 final hearing on the DIP. It's a little bit unclear to me to  
14 what extent we'll touch on the DIP today or not. I guess I'm a  
15 little bit confused by that, Your Honor. I don't think you  
16 would hear objections to simply continuing use of cash  
17 collateral on an interim basis till next Tuesday to permit  
18 those discussions to go forward. We're certainly willing,  
19 ready and able to work tonight, tomorrow, Sunday to see if we  
20 can reach common ground. In fact, if there are structural  
21 changes, that can alleviate at least some of our objections. I  
22 will say that we disagree with debtors' counsel. We think some  
23 of the changes have been a step backwards. I could point to  
24 the notion that this may survive as an exit facility with  
25 second liens on our properties. We don't view that as an

1 improvement, Your Honor. But that said, the debtor may not  
2 think --

3 THE COURT: You're talking about the DIP now.

4 MR. GOTTESMAN: But they're all -- in some respects,  
5 Your Honor, they're all inextricably linked, because what in  
6 fact constitutes adequate protection, what may satisfy the  
7 property level lenders on a consensual basis, to a certain  
8 extent is that balancing act, Your Honor, as to what everything  
9 looks like when the sun comes down on Tuesday.

10 THE COURT: Well, that's certainly something to think  
11 about during lunch break. Yes, sir?

12 MR. SAMSON: Your Honor, thank you. Paul Samson for  
13 the 2008 facility lenders. I just want to echo what the Court  
14 suggested earlier, that all of the lenders try to coordinate,  
15 because we haven't been part of the group at the table. My  
16 clients are out 1.5 billion. There's a lot of other lenders'  
17 counsel in the room that aren't part of the group at the table.  
18 I just want to second the Court's suggestion that if all of the  
19 lenders could get together during the break, we might be able  
20 to better coordinate than has been already.

21 THE COURT: I suggest the lenders perhaps use the  
22 courtroom and my conference room next door during the lunch  
23 break and see if that process can begin.

24 Yes, ma'am?

25 MS. GOLDSTEIN: Your Honor, I would just like to make

1 one more comment before the break. Your Honor, we have been in  
2 dialogue with various counsel for the secured lenders. We've  
3 been in dialogue with the Venable firm. We've been in dialogue  
4 with Alston & Bird. We've been in dialogue with counsel for  
5 the 2008 lenders. I can't say we've been in dialogue with  
6 every single -- as you know, thirty objections were filed. And  
7 we listened, we heard proposals, we said we could or couldn't  
8 do certain things.

9 But Your Honor, we couldn't strike a deal, for  
10 example, with one lawyer for one set of secured creditors and  
11 then say gee, that may or may not be acceptable to another set.  
12 I would say that we were never approached on behalf of a large  
13 group of secured lenders to see if we could cut a universal  
14 deal. I think that the achievement that we made in terms of  
15 adequate protection were based upon the fact that we listened  
16 to the mortgage lenders in a number of conversations and we  
17 think that by doing so we were able to address their biggest  
18 point.

19 So I just want the record clear that we have not  
20 rejected any conversations. We've spoken to a number of these  
21 lawyers who have called us. But Your Honor, your point on  
22 coordination really has not existed in terms of the approach to  
23 the debtors. The debtors couldn't make one-off settlements  
24 here. We view these as all common issues.

25 THE COURT: It's nobody's fault. It's nobody's

1 responsibility. That is a function of the complexity of these  
2 cases. But I also think, in terms of what we're trying to do  
3 today, it's important to keep in mind what we're doing, which  
4 in the first place is an attempt to at least make one firm step  
5 forward on cash collateral. Cash collateral is not forever. I  
6 mean --

7 MS. GOLDSTEIN: We agree with that, Your Honor.

8 THE COURT: -- there's nothing in the cash collateral  
9 order that says this will -- there may be an end date, and the  
10 last one had an end date of today for the lenders' protection.  
11 But there's nothing that prevents somebody from coming in, that  
12 I know of, for good grounds --

13 MS. GOLDSTEIN: Your Honor, we understand that and --

14 THE COURT: -- and saying it doesn't work any more.  
15 The cash collateral order, whatever it is today, has to be  
16 coordinated with the DIP. I understand that there may be DIP  
17 issues. And I understand -- I think, in my own view, and you  
18 can tell me I'm wrong, because I just read papers sitting up  
19 here, I'm not in the middle of things. But it looks to me like  
20 the really more difficult issues for the secured lenders are  
21 the DIP issues. You raised one yourself, sir. And how do you  
22 coordinate the aspects of the DIP, which is a forever matter --  
23 not forever, but at least is designed to be fairly permanent --  
24 with the lenders' interests. So I think those are things that  
25 can be thought about.

1           What we're trying to deal with this afternoon, I  
2           think, are the fairly limited issues of default rate,  
3           attorneys' fees, payment of principal, nature of the  
4           replacement lien, and the like. And as I suggested a few  
5           minutes ago, I don't think that's rocket science. But parties  
6           can certainly argue to the contrary. Maybe we've gone as far  
7           as we can and we should take a break for an hour until 2:15.  
8           Will that be enough time?

9           MS. GOLDSTEIN: Yes, thank you, Your Honor.

10          THE COURT: Thank you.

11          IN UNISON: Thank you, Your Honor.

12          (Recess from 1:09 p.m. to 2:40 p.m.)

13          THE CLERK: All rise.

14          THE COURT: Please be seated. All right, Ms.  
15          Goldstein, are we ready to proceed?

16          MS. GOLDSTEIN: Your Honor, one thing, before we  
17          proceed to the testimony, on the cash collateral hearing. We  
18          thought that it would be helpful, in connection with the  
19          process for finalizing the DIP terms, to ask for the Court's  
20          assistance in setting a deadline for the submission of revised  
21          DIP bids, setting a deadline for us to file the last and final  
22          DIP loan agreement, frankly, so that no one can complain they  
23          were left out of the process. And our suggestion would be that  
24          final bids be submitted to the debtors' counsel, copy to the  
25          committee counsel, by noon tomorrow, and that we would file

1 with the Court a final DIP loan agreement by noon on Monday.  
2 We would seek the Court's assistance in setting that kind of a  
3 schedule.

4 THE COURT: All right.

5 MR. STAMER: May I be heard, sir?

6 THE COURT: Let's hear from the committee first and  
7 then I'll hear from anyone else.

8 MR. STAMER: Thank you, Your Honor. Your Honor, the  
9 first I heard of this was when I walked back into the courtroom  
10 from lunch. As Your Honor will recall from the objection that  
11 we filed, our concern with respect to the current situation is  
12 the company was inclined to cut off the auction too early.  
13 Look, there needs to be -- we understand there needs to be  
14 finality. But as this has been an iterative process, every  
15 iteration has been valuable. I think this -- and the  
16 suggestion I made to counsel was not have the lawyers seek to  
17 set arbitrary deadlines, but when we have a break, either after  
18 the hearing, or if we have a break, is seek input from the  
19 bidders as to what the process should look like. And if the  
20 bidders say yeah, okay, best and final by noon tomorrow, it all  
21 works for us. But I'd like not to do it arbitrarily, and I'd  
22 like to have the benefit of people's views.

23 Your Honor, just one other thing, the only  
24 information the Court has, I think, with respect to the bids  
25 right now -- there are two pieces with respect to timing. One,

1 you heard Pershing Square say their commitment expires today.  
2 And second, which I'm not sure the Court is aware of, the  
3 commitment that was signed by the Farallon group doesn't expire  
4 until the end of June.

5 MR. SPEAKER: End of -- June 1.

6 MR. STAMER: I'm sorry, June 1. So Your Honor, we're  
7 not in a hurry to do the wrong DIP. We're not looking to spin  
8 this out longer than is necessary, but I think we need to think  
9 about any process that's set to finalize the DIP negotiations.  
10 Thank you, Judge.

11 THE COURT: All right, Mr. Zirinsky? Come forward to  
12 the microphone. You can't be heard in the other room if you  
13 don't come to the microphone, and it may not be picked up by  
14 the machine. Go ahead.

15 MR. ZIRINSKY: Thank you, Your Honor. Your Honor,  
16 the secured lenders took Your Honor's suggestion over the  
17 course of the recess and we did meet. And we have established  
18 some common ground. And there may be others who are also going  
19 to want to speak to this --

20 THE COURT: I'm sure there are, and I'll hear from  
21 them all.

22 MR. ZIRINSKY: But basically, Your Honor, we  
23 concluded the following. One, is that we do believe that it  
24 would be better to defer the hearing on cash collateral until  
25 Tuesday, assuming that's still going to be the hearing on the

1 final DIP, for the following reasons.

2 One, we believe that the issues of adequate  
3 protection will only be partially -- or can only be partially  
4 dealt with in the context of the cash collateral hearing  
5 because the overlay of a DIP may well impact on whatever Your  
6 Honor may decide today. If we were to go forward on cash  
7 collateral, Your Honor might decide that after hearing about  
8 the DIP on Tuesday, that what you thought was adequate today  
9 might not be adequate on Tuesday because of other provisions  
10 that will come into play.

11 THE COURT: I'm not sure I understand what you're  
12 saying.

13 MR. ZIRINSKY: Well --

14 THE COURT: Are you saying that without availability  
15 of a DIP, cash collateral can't be used because adequate  
16 protection will not be sufficient?

17 MR. ZIRINSKY: No, I'm not saying that Your Honor  
18 couldn't find adequate protection. I don't believe the  
19 debtors' proposal affords adequate protection, but I don't  
20 believe that Your Honor -- it's not that Your Honor couldn't  
21 find some way to fashion adequate protection for use of cash  
22 collateral. However, we think that because of issues raised,  
23 by at least the DIP that has been most recently presented by  
24 the debtors, including junior liens and other provisions, that  
25 that will impact on adequate protection issues beyond what



1 would be dealt with today.

2 For example -- and I'm not trying to get into the  
3 merits, Your Honor, I'm just really trying to make a point --  
4 part of the adequate protection package that the debtors  
5 propose to give is a lien on inter-company claims, post-  
6 petition inter-company claims. Those inter-company claims are  
7 going to be coming from the entities who are going to be using  
8 cash collateral because they don't have sufficient cash on  
9 their own to generate cash. So those will be the people that  
10 will owe money into the cash collateral system: the users of  
11 cash. If there were to be a shortfall, the other property  
12 owners whose cash was used, whose properties are cash-flow  
13 positive whose cash was used, would be looking to recover those  
14 receivables from entities that were users of cash: deficit  
15 properties. And by putting junior liens on the assets of those  
16 deficit properties in favor of a DIP loan, you would basically  
17 have a significant impact on the ability of the positive  
18 property lenders to be able to ever recover on those inter-  
19 company loans. And I'm not trying to get into the merits, as I  
20 said, but that's just one example of the type of issue that we  
21 see that's all inter-related.

22 What we've also done is we have agreed to start  
23 meeting this afternoon to develop a common approach towards  
24 what DIP loan would be satisfactory to us that would also  
25 accommodate the needs of the debtor. We have heard, from at

1 least one very credible party, their willingness to put a  
2 proposal in. And I believe they've given the debtors past  
3 proposals where they would not be taking any junior liens on  
4 collateral. They would not insist upon a concentrated bank  
5 account, and other provisions that we would find objectionable,  
6 as far as we understand them, under the current DIP that's  
7 being proposed, that many if not all of those objectionable  
8 provisions might not be part of that DIP. That party is in  
9 court and I believe their counsel is prepared to make a brief  
10 statement.

11 What we think would be best, and I'm going to take a  
12 line from Your Honor -- we spent a lot of times together in the  
13 Northwest Airlines case, and one of Your Honor's messages in  
14 that case was "Let's do it right the first time. Let's do it  
15 once and let's do it right." We think there's an opportunity  
16 here over the next several days, if we can bring  
17 representatives of the secured parties together -- and we've  
18 agreed to work together -- if we can bring them together with  
19 the debtors and with the creditors' committee and get a process  
20 going, we think we might be in a position where everybody could  
21 present to Your Honor next week, hopefully on Tuesday. We  
22 could present to Your Honor next week a DIP and a cash  
23 collateral order that would be far less objectionable than what  
24 we are dealing with if we go forward today, and certainly what  
25 we're going to be dealing with if we go forward on Tuesday,

1 based on what we've heard of the debtors' current thinking on a  
2 DIP proposal.

3 We think it's in the interests of everybody to see if  
4 we can't get a consensual set of orders done here. And I think  
5 that, in fairness, we didn't see this most recent DIP until  
6 last night. Your Honor's already heard about that.

7 THE COURT: We're not dealing with the DIP today.  
8 And the DIP intersects with cash collateral or with the rights  
9 of the secured lenders in a few ways that I think you started  
10 this morning to at least say that you thought we should clarify  
11 and specify. And I think that might be useful to do, so that  
12 we get on the table those intersections such as junior liens  
13 and how a debtor, if at all, gets out of bankruptcy, or if  
14 everybody gets out of bankruptcy together. We'll see. My  
15 comment as to doing it right the first time is probably related  
16 to the fact that airlines have been known to go into bankruptcy  
17 more than once.

18 MR. ZIRINSKY: So have real estate developers.

19 THE COURT: Well, again, I will say exactly what I  
20 said. I hope that we'll do it right the first time, but we're  
21 not doing everything today. Let me hear from the other  
22 members. I hear your point. We are not dealing with the DIP  
23 today. And if I don't let your colleague speak, he is going to  
24 have a real problem.

25 MR. ZIRINSKY: My only point, Your Honor, is that we

1       ought to have -- the issues are inter-related. Use of cash  
2       collateral is going to be impacted on what type of adequate  
3       protection liens can be afforded. And to the extent that a DIP  
4       lender takes collateral away that otherwise might be used for  
5       adequate protection liens, there's going to be a conflict.

6               And our point is we're prepared to let the debtor  
7       continue to use cash collateral on an interim basis until we  
8       get to the DIP. Thank you, Your Honor.

9               MR. CROSS: Your Honor, I'm not trying to be  
10      obnoxious by standing up. I was supposed to be the appointed  
11      spokesperson. We had about thirty lenders that met. We do  
12      have unanimity and agreement on a number of things.

13              THE COURT: All right.

14              MR. CROSS: One of those things is the process, and  
15      it was a fair statement of the process. We are committed to  
16      meeting later this afternoon and forming a working group so  
17      that we can give the debtors what they requested earlier, which  
18      is a singular voice to at least discuss those provisions of a  
19      DIP and a cash collateral agreement which would be acceptable  
20      to the lender community. We recognize there are certain  
21      differences among the lenders, but we would like to try and  
22      sort those out so that we could narrow them, and we believe  
23      that we could substantially narrow them if we were given a  
24      small window of time to do so.

25              We also believe, based upon what we've heard, that if

1 we were given additional time, many of the concerns we have may  
2 go away with a DIP that is selected, so that a lot of the  
3 issues, that are briefed ad nauseam in the papers in front of  
4 you, will melt away because the DIP will no longer concerning  
5 things like second liens on real estate. That's a possibility.  
6 So what we would like the Court to do is please allow us to  
7 adjourn any further issues and debate on cash collateral or the  
8 DIP to a subsequent date. Tuesday is fine. I would suggest  
9 it's fine with the lender community if we went a week to allow  
10 this to be fully fleshed out.

11 I agree with Mr. Stamer that we should meet with the  
12 lenders and ask the lenders what they want, rather than having  
13 DIP on top of DIP being presented to the Court and presented to  
14 the lenders to react to. We would like to see it as a more  
15 organized process. And as is typical in most cases where the  
16 lenders have cash collateral, we ask just for a seat at the  
17 table so that we can participate in those conversations, and we  
18 have our act together and are willing to do that.

19 So we collectively, all thirty-three or thirty-four  
20 of us, are asking you to give us that opportunity so that we  
21 don't have to all come up and compete for the podium and you  
22 won't see me rising and sitting down, up and down, like one of  
23 those bobbing ducks that used to be in the back of the cars.

24 THE COURT: Fair enough.

25 MR. CROSS: So that's what we're asking. And I don't

1 think, unless I misspoke, that we have anyone else who's going  
2 to seize the podium. I think that we are speaking with one  
3 voice.

4 We have one issue with respect to the confidentiality  
5 agreement that we'd like to be heard this afternoon. But other  
6 than that, we're requesting an adjournment if you would grant  
7 us that.

8 THE COURT: All right. Anyone else?

9 MR. ROSENBERG: Your Honor?

10 THE COURT: Yes, come forward. You have to come  
11 around this way, Mr. Rosenberg.

12 MR. ROSENBERG: Thank you, Your Honor.

13 THE COURT: For all present who wonder why we're  
14 meeting on a Friday, you can thank Mr. Rosenberg for that. The  
15 debtors proposed to meet yesterday but there was a lunch that  
16 many people here attended, and well, so be it. But go on, you  
17 have a statement to make.

18 MR. ROSENBERG: Your Honor, that leaves me  
19 speechless. I was going to say that I'll be far briefer than I  
20 was yesterday.

21 THE COURT: All right.

22 MS. GOLDSTEIN: I'd simply make --

23 THE COURT: I hope so.

24 MR. ROSENBERG: Very brief, Your Honor, even briefer  
25 than I was going to be ten seconds ago. Deutsche Bank, we

1       firmly believe, is somewhat differently situated from all of  
2       the other lenders in this case, for reasons that were set forth  
3       in our papers and that I won't argue the merits of at this  
4       time.

5               So on the one hand, I simply wanted to distinguish  
6       Deutsche Bank from the other lenders who are all speaking with  
7       one voice. But having said that, want to say that, you know,  
8       ninety percent of it will be the same. And we're very happy to  
9       see that I think some rationality and sense is prevailing here  
10      of people getting together and trying to work this through.  
11      And we would very much support the notion of an adjournment in  
12      order to see if we can't make progress, rather than shooting at  
13      a continually moving target that may moot the issues when it  
14      shakes out at the end of the day. We would very much support  
15      that adjournment.

16             THE COURT: All right.

17             MR. FELDMAN: Good afternoon, Your Honor, David  
18      Feldman from Gibson, Dunn & Crutcher. My colleague, Mr.  
19      Kelsey, spoke earlier. I represent Farallon, Canyon, Luxor and  
20      Whitebox, who until about 2 a.m. last night had been the  
21      proposed DIP lenders in this case.

22             THE COURT: You want an adjournment so you can get  
23      some sleep.

24             MR. FELDMAN: No -- well, that would be nice. Sleep  
25      would be nice at this point. That would be very nice. I

1 just -- a couple of observations. I guess after the comment of  
2 doing it right the first time, I think unfortunately with  
3 regard to the DIP process, we have lost that opportunity,  
4 because I feel some sense of deja vu here as the debtors seek  
5 to set a deadline. Frankly, there was a deadline that had been  
6 set and we had submitted all of our papers, full set of  
7 commitment papers and a credit agreement and the like, and then  
8 frankly, it wasn't until literally 2 a.m. last night that we  
9 were told there was a different deal that the company was going  
10 to go forward with. We still haven't seen, while we've heard  
11 some discussions of the terms and seen snippets of various  
12 documents and some interim drafts, we still haven't seen final  
13 documents on this new proposal.

14 So if there is to be a date set for us to put in a  
15 response, effectively, to that proposal, which was a response  
16 to ours, it would be nice to know really what it is. I now  
17 hear that that commitment, you know, if it doesn't get approved  
18 today, goes away. So I'm not sure whether that is something  
19 we're shooting at or not.

20 But I think that we're -- one thing I should tell you  
21 about the folks that I represent, and maybe you've heard this  
22 already, is it's not just folks who are interested in the DIP  
23 investment. That's a nice component of it. But the folks that  
24 I represent are all major unsecured creditors in this case.  
25 And their, frankly, initial motivation here was to provide a



1 DIP that was a reasonable investment but also in the best  
2 interests of unsecured creditors in this case. And I think  
3 they need and deserve and what's appropriate under the  
4 circumstance is that they have an appropriate understanding of  
5 what we're competing against and a process which is fair and  
6 balanced. And to date, you know, it's been a little uneven,  
7 Your Honor.

8 And we understand that the debtor's juggling lots of  
9 different things, but we want an opportunity to have a fair  
10 shot at getting this financing. We think it would be a good  
11 thing for the estate generally for our group to provide the  
12 financing. And what we don't want to do is be shooting against  
13 a proposal in a vacuum.

14 THE COURT: Thank you.

15 MR. FELDMAN: Thank you.

16 THE COURT: Anyone else, briefly?

17 MS. BUELL: Yes, Your Honor. Your Honor, Deborah  
18 Buell, Cleary Gottlieb, on behalf of Goldman Sachs Mortgage  
19 Company. I'm speaking briefly at the request of the secured  
20 lenders simply to confirm to the Court that Goldman Sachs  
21 Mortgage Company is proposing a DIP. The debtors have done  
22 some talking to us. We have sent over a revised proposal just  
23 this morning which they have not, obviously, had an opportunity  
24 to fully evaluate. It does dispense with the second lien,  
25 which is obviously of interest to the secureds and was the

1 subject of some lunchtime conversation. So we just want to say  
2 that certainly on behalf of this proposed DIP lender, we very  
3 much appreciate the adjournment and expect to work very  
4 diligently with the debtors and the constituencies and whatever  
5 deadline the Court sets.

6 MS. GOLDSTEIN: Your Honor, I would like to speak on  
7 behalf of the debtor in opposition to adjourning the cash  
8 collateral hearing. All we have heard, I believe, from the  
9 secured lenders are issues relating to the DIP. And in fact,  
10 there are a couple of things I can clarify to make this very,  
11 very simple.

12 One, the proposed lien on the central operating  
13 account, we can propose under any circumstance. We have the  
14 Farallon DIP on file. If it's the case that Pershing has gone  
15 away, we have the Farallon DIP on file. That permits it. And  
16 we believe we can agree to grant that lien under any  
17 circumstance. We also believe we can agree to grant the second  
18 lien on the Goldman properties under any circumstance.

19 So Your Honor, I think, from what I heard in all the  
20 speeches that just occurred, the big issue --

21 THE COURT: Well, they weren't speeches. They are  
22 statements of position.

23 MS. GOLDSTEIN: Whatever.

24 THE COURT: And parties are --

25 MS. GOLDSTEIN: They're entitled to be heard.

1 THE COURT: -- reacting very quickly, and for all of  
2 you on very little sleep, to a changing situation, but one that  
3 may be in the best interests of the estates generally.

4 MS. GOLDSTEIN: And Your Honor, we're trying to do  
5 what's in the best interests of the estate.

6 THE COURT: I'm certain of that.

7 MS. GOLDSTEIN: Every time we've talked to secured  
8 lenders they haven't relented on principal, legal fees, default  
9 interest as adequate protection --

10 THE COURT: Well, only some of them will raise those  
11 issues.

12 MS. GOLDSTEIN: Okay.

13 THE COURT: We can certainly deal --

14 MS. GOLDSTEIN: Notwithstanding what we've  
15 proposed --

16 THE COURT: -- with those and I think it would be --  
17 the only reason not to deal with those issues this afternoon  
18 would be to give parties time to deal with things that are more  
19 important.

20 MS. GOLDSTEIN: And --

21 THE COURT: But I think we can deal with those issues  
22 very quickly. As I said earlier, this is not rocket science.

23 MS. GOLDSTEIN: No, we totally agree, Your Honor.

24 THE COURT: Nor is it forever.

25 MS. GOLDSTEIN: And that's why --

1 THE COURT: Everyone can reserve their rights to come  
2 back. I hope they don't, but you have the right to come back  
3 and propose to the debtors first and then to come to the Court  
4 for additional adequate protection. And that's if anybody  
5 changes from being over-secured to under-secured or to being  
6 just on the cusp, which seems to be a frequent occurrence.

7 MS. GOLDSTEIN: And Your Honor, we would like very  
8 much to go ahead and put on our case on cash collateral,  
9 because there are legal issues there that need to be discussed.  
10 And we think it's important -- they have nothing to do with the  
11 DIP loan -- to get this done so that we, the debtor, can move  
12 on with this case. We're prepared to put on our case and we'd  
13 like to do that this afternoon. Your Honor, you know, we have  
14 seen the prior Goldman proposals. We know it does not include  
15 a second lien. There were other economic reasons, et cetera,  
16 for our choice. We certainly welcome the competitor DIP  
17 lenders to not require a second lien. We would give a negative  
18 pledge. There are ways around that. But so far we have looked  
19 at the DIP loan from the point of view of what is best for the  
20 estate.

21 So Your Honor, I think that is for another day, but I  
22 believe that nothing has been put forth this afternoon by the  
23 secured lenders that impacts our ability, or that should  
24 detract from our ability to put on our case on cash collateral  
25 under any DIP lending scenario.

1 MR. STAMER: Your Honor, may I be heard for just a  
2 minute? I promise it will be less than sixty seconds. I just  
3 want to clarify where the committee is. I stood up, Your  
4 Honor, in opposition to setting forth in stone a procedure as  
5 it related to the DIP auction process. That is not my position  
6 as it relates to cash collateral. I think the DIP and cash  
7 collateral are severable. I agree with the company, you can go  
8 forward with cash collateral, you can approve cash collateral  
9 without going forward with the DIP. And if something happens  
10 with respect to the DIP, we can talk about it when that's  
11 before the Court. But I wanted to make sure the Court  
12 understood there's a distinction between my point on the DIP  
13 and cash collateral.

14 THE COURT: I understand that, and I think there is a  
15 distinction between the two. Let's go forward with testimony  
16 on the cash collateral. The lenders or all parties will then  
17 have a better record on which to make whatever determinations  
18 they seek. If they need to cross-examine, it should be solely  
19 related to the issues of cash collateral. We are not dealing  
20 with the DIP, and I realize without any question, that there  
21 may be overlap, but that has to do with the DIP. And if the  
22 DIP impinges on whatever cash collateral principles are  
23 established today, then we'll have to revise the cash  
24 collateral order accordingly, or we won't be able to enter a  
25 DIP order. All right, call your witness.

1 MR. STROCHAK: Thank you, Your Honor. Adam Strochak,  
2 Weil, Gotshal, for the debtors. We call James Mesterharm from  
3 AlixPartners. Your Honor, I have an exhibit binder. With  
4 permission, I'll approach and hand a copy to the Court and one  
5 for the witness?

6 THE COURT: All right.

7 MR. STROCHAK: I don't have binders for everybody in  
8 the room. I just have copies of all of the exhibits. Anybody  
9 who asked for a copy, we provided copies late last night, and  
10 I'm happy to provide copies. My colleague, Mr. Lopez, has  
11 copies of exhibits.

12 MR. SPEAKER: I'd like a copy.

13 MR. STROCHAK: You certainly may. Mr. Lopez has  
14 copies right here and he's happy to distribute them.

15 THE COURT: Just carry them. Stay where you are.  
16 Just carry them over. All right, go ahead. We have a half an  
17 hour.

18 MR. STROCHAK: Thank you.

19 DIRECT EXAMINATION

20 BY MR. STROCHAK:

21 Q. Mr. Mesterharm, how long have you been working with  
22 General Growth?

23 A. I started with General Growth the first week of December.

24 Q. And what are your responsibilities there?

25 A. Myself and my firm have been engaged to be restructuring

1 advisors. We assist the company in its preparation of cash  
2 forecasts. We're assisting the company in the preparation of a  
3 budget. We've also assisted the company in preparing for  
4 filing of these Chapter 11 cases and have participated in  
5 discussions with creditors and creditors' advisors.

6 Q. Thank you. Let me ask you a few questions about General  
7 Growth's operations. How does the company manage its  
8 properties?

9 A. The company manages its properties in a centralized  
10 fashion. They provide, through their corporate organization,  
11 management of the malls from both an asset and property basis.  
12 They also provide all of the main administrative functions of  
13 the company on a centralized basis, such as accounting, legal,  
14 human resources. But more importantly, operationally, they  
15 provide centralized leasing services to the properties and also  
16 centralized procurement and cost-related management services  
17 around development and construction.

18 Q. Does the company's centralized management structure  
19 provide any benefits for the individual property level  
20 entities?

21 A. Certainly. The company, in the way it operates  
22 today, it operates as a portfolio of properties which benefit  
23 from the centralized system by virtue of the relationships that  
24 the debtor has with tenants. Tenants appreciate working with  
25 General Growth on a centralized fashion when they would like to

1 approach the company and discuss their portfolio of leases with  
2 the company and work out deals across the network of the mall  
3 operations, and also in terms of how the company manages its  
4 cash. And a centralized fashion provides a central framework  
5 for collection and consolidation and management of cash and  
6 disbursements, which enables the company to do it on the most  
7 cost-effective basis with the highest level of internal  
8 controls. And then lastly, on a cost-basis, obviously not  
9 having to replicate all of the centralized functions of the  
10 corporate structure and provide them at each individual mall,  
11 the company gets leverage of staff. And then lastly, they get  
12 synergies from being able to buy services and products in bulk.  
13 So for example, the negotiation of security agreements for  
14 security vendors who will provide those services across  
15 multiple malls, and the company believes that they achieve the  
16 best pricing by negotiating in this fashion.

17 Q. Do the individual property-level entities have their own  
18 employees?

19 A. The individual property-level -- the operations do not  
20 have their own employees. In fact, they're all employees of  
21 GGPLP. And they're provided to the company. They're  
22 actually -- their W-2, their payroll, is through GGPLP.

23 Q. Let me direct you to the exhibit binder, and turn, if you  
24 would, to Exhibit 1.

25 MR. ROSEN: Your Honor, we still haven't received any



1 copies.

2 THE COURT: I'm sorry about that. We're still going  
3 forward. No one has to cross-examine today. Go ahead.

4 MR. STROCHAK: Thank you, sir.

5 Q. Mr. Mesterharm, what is Exhibit 1?

6 A. Exhibit 1 is a thirteen-week cash flow forecast of the  
7 consolidated operations of General Growth Properties.

8 Q. Did you participate in the preparation of the forecast?

9 A. Yes, I did, with myself and my team.

10 Q. Would you just describe generally how it was prepared?

11 A. Sure. The company itself has a very detailed forecast  
12 process. They develop a property-by-property forecast which  
13 they refer to as the Rolling-24. It is a monthly forecast by  
14 mall built from a bottoms-up basis by rent rolls and  
15 combination of information around the leases that exist; also,  
16 assumptions on new deals that could potentially be entered  
17 into, along with cost-level detail by property. In addition,  
18 it has corporate-related expenses budgeted out by corporate  
19 departments.

20 We then work with the company in terms of taking that  
21 information and converting it into more of a cash forecast as  
22 opposed to a more accounting-oriented forecast. And that  
23 entailed basically taking certain things that were flatlined on  
24 more of an accrual basis and recharacterizing them in a -- to  
25 reflect more timing of cash payments.

1           And then in converting it to a thirteen-week, we looked at  
2           historical payment and receipt patterns and took monthly  
3           information and translated it and converted it into weekly  
4           information.

5           Q.   Let me just turn your attention to Exhibit 2.  Is that the  
6           thirteen-week that you mentioned?

7           A.   Well, Exhibit 1 is the thirteen-week.

8           Q.   I'm sorry.  I got it backwards.  And Exhibit 2, what is  
9           Exhibit 2, sir?

10          A.   Exhibit 2 is a two-year forecast, again, based off of the  
11          similar company Rolling-24 forecast, again, converting certain  
12          aspects into a more cash-oriented forecast.  We utilized the  
13          May through Dece -- May '09 through December 2010 numbers for  
14          this forecast.

15          Q.   What's your degree of comfort with the two-year forecast?

16          A.   Yeah, it's a very thorough process in putting this  
17          forecast together.  As I said, it is built from the bottom up  
18          by property.  It is updated monthly.  So if a tenant files for  
19          bankruptcy or a tenant lease is terminated for one reason or  
20          another, that's updated through the remaining period of the  
21          forecast.  Also, as the company experiences certain changes in  
22          its cost structure, that's built into the forecast each month.  
23          So it is the company's most current information.

24          Q.   All right.  Let me turn you, if I could, to Exhibit 4.  
25          And if you would explain for me what is Exhibit 4, sir?

1 A. Exhibit 4 is a chart of the company's expected liquidity  
2 position on a consolidated basis and looking at the liquidity  
3 that the company would expect to have both with the DIP loan.  
4 This DIP loan, I believe, we utilized here was the last-night  
5 DIP loan versus proceeding without a DIP loan.

6 Q. When you say "last night", do you mean the exchangeable --  
7 the Farallon DIP or the one from Pershing?

8 A. Oh, actually, I apologize. This was the -- this was based  
9 on the exchangeable.

10 Q. Was that true for all the forecasting and projection  
11 information that you developed?

12 A. Yes.

13 Q. It was based on the --

14 A. Yes.

15 Q. -- the DIP proposal that was filed earlier this week with  
16 our reply papers?

17 A. Yes. All of the projections, the thirteen-week, the  
18 monthly forecasts through the balance of '09 and '10, and these  
19 charts, were prepared utilizing the Farallon DIP.

20 MR. STROCHAK: Your Honor, we offer Exhibits 1, 2 and  
21 3.

22 UNIDENTIFIED SPEAKER: We said 1, 2 and 4.

23 MR. STROCHAK: Oh, excuse me, 1, 2 and 4. I'm sorry,  
24 Your Honor.

25 THE COURT: I think I'll let parties reserve their

1 objections till they've had a chance to review them. They are  
2 what they are. And there can be cross-examination at a later  
3 date if the parties want to do so. So we'll provisionally  
4 admit them.

5 (Debtors' Exhibit 1, 13-week cash flow forecast of the  
6 consolidated operations of GGP, was hereby received into  
7 evidence as of this date.)

8 (Debtors' Exhibit 2, two-year cash flow forecast, was hereby  
9 received into evidence as of this date.)

10 (Debtors' Exhibit 4, chart of the GGP's expected liquidity  
11 position on a consolidated basis, was hereby received into  
12 evidence as of this date.)

13 MR. STROCHAK: Thank you, Your Honor.

14 THE COURT: But if any -- I can hear any argument.  
15 Anybody who wants to argue at this time can argue.

16 MR. ZIRINSKY: I just want to make a point, Your  
17 Honor, if I may speak from back here just to save time.

18 THE COURT: Well, it saves time but it may not be  
19 picked up. I can repeat it if you want me to, without adopting  
20 it. Why don't you --

21 MR. ZIRINSKY: If you can receive it without adopting  
22 it, provisionally would -- subject to objection, that's fine.

23 THE COURT: They are the debtors' forecasts. They  
24 can certainly be -- you can certainly cross-examine.

25 MR. ZIRINSKY: My only point, Your Honor, is that

1 they make certain assumptions about a DIP loan, and this is a  
2 cash collateral hearing.

3 THE COURT: You are -- so you're objecting to Exhibit  
4 4 principally?

5 MR. ZIRINSKY: Well, the cash forecasts --

6 THE COURT: Cash forecasts also. Fine. We don't  
7 have a DIP loan yet, so all of those forecasts are provisional.

8 MR. ZIRINSKY: Thank you, Your Honor.

9 THE COURT: You have another point?

10 MR. STEIN: Yes, Your Honor. Thank you. Grant Stein  
11 on behalf of Prudential. The problem with Exhibit 1, Your  
12 Honor, is that under Federal Rule of Evidence 1006, Exhibit 1  
13 is a summary. And the testimony, as I heard it, is that there  
14 is a property-by-property specific forecast that underlies that  
15 summary. That needs to be provided to us; it has not been,  
16 certainly for the properties I'm dealing with. And on that  
17 basis, we object to its admission until we have the underlying  
18 information and the opportunity to review it.

19 THE COURT: I gave you the opportunity to reserve  
20 your cross-examination. Therefore, your objection is  
21 overruled. But you may, if you wish -- I hear a request for  
22 your property's information, and I'm sure the debtors will take  
23 it under advisement. Thank you.

24 MR. STEIN: Thank you, Your Honor.

25 THE COURT: Anyone else? All right.

1 MR. STROCHAK: Just for the record, Your Honor --

2 THE COURT: Yes?

3 MR. GOTTESMAN: Your Honor, just in terms of  
4 procedure, because there are many objections that are being  
5 raised, I don't want -- obviously don't want thirty of us  
6 popping up and down.

7 THE COURT: Good idea.

8 MR. GOTTESMAN: But --

9 THE COURT: Very, very sound.

10 MR. GOTTESMAN: But one last pop-up, Your Honor. But  
11 I do want to make a standing statement that we are -- unless we  
12 pop down, if you will, we are joining in these objections and  
13 that --

14 THE COURT: I already reserved everyone's right to  
15 cross-examine, to further examine with regard to these numbers.  
16 They're all taken in provisionally. And I'm not sure I need  
17 any of this to rule on cash collateral, but we have it. You  
18 know have more information, which I think should be useful to  
19 everyone.

20 MR. GOTTESMAN: Thank you, Your Honor.

21 MR. STROCHAK: Just for the record, Your Honor, for  
22 any of the lenders who requested it, we did provide the backup  
23 on a property-by-property basis for those lenders over the past  
24 week or so.

25 THE COURT: All right. Well, Prudential apparently

1 wants it. They've been very busy filing motions, and they  
2 probably haven't had time to ask for the underlying  
3 information. I'll get to the scheduling of motions later  
4 today.

5 MS. GOLDSTEIN: For the record, Judge the mall  
6 lenders --

7 THE COURT: Move over the --

8 MS. GOLDSTEIN: For the record, Judge, the mall  
9 lenders specially serviced by Helios asked for that information  
10 in -- weeks ago through Mr. Youngman of debtors' counsel's  
11 firm --

12 THE COURT: And I assume you wish to add --

13 MS. GOLDSTEIN: -- and have not --

14 THE COURT: -- did not receive it.

15 MS. GOLDSTEIN: -- and have not received it.

16 THE COURT: All right, well --

17 MS. GOLDSTEIN: Yes, and not smiling, Judge.

18 THE COURT: Thank you for letting me know.

19 MR. STROCHAK: May I proceed?

20 THE COURT: Yes.

21 MR. STROCHAK: Thank you.

22 BY MR. STROCHAK:

23 Q. Mr. Mesterharm, turning to cash management issues, would  
24 you just describe briefly the debtors' cash management system?

25 A. Sure. The company manages its cash, and always has, on a

1 centralized basis. What that implies -- or what that entails  
2 is that checks are received at lockboxes and then matriculate  
3 or pass their way through up to the parent. That generally  
4 happens through one of two majority paths: Either the lockbox  
5 itself points directly up to GGPLP's concentration account, or  
6 it passes through a lender depository account. And absent an  
7 event of default, it continues to pass up, the debtor is given  
8 the ability to continue to have access to the funds, and they  
9 pass it back up to GGPLP's concentration account.

10 The cash, when it arrived at GGPLP, was, you know, in  
11 effect, invested in a series of overnight investments and  
12 deposited in investment accounts and then was utilized to pay  
13 the costs of the corporate enterprise plus the property-level  
14 enterprise. All the payments were made at the top level.

15 Q. Do the individual property-level debtors have their own  
16 cash management systems?

17 A. No. There are some lenders who believe cash traps are  
18 cash management systems. But the only systems that are set up  
19 on the wholly-owned properties to make payments and invest cash  
20 are those maintained by GGPLP.

21 Q. Under what circumstances were cash traps imposed?

22 A. Cash traps were generally imposed if an event of default  
23 occurred, which predominantly, prior to the bankruptcy filing,  
24 was driven by loan maturities. And lenders then -- once the  
25 loan matured and the company was unable to negotiate



1 extensions, they enacted cash traps, with the exception of the  
2 Fashion Show and Palazzo facilities where there the company  
3 attempted to negotiate a nine-month extension of the loan.  
4 They were unsuccessful at getting a nine-month extension. In  
5 negotiating the nine-month extension, the company did agree to  
6 certain cash traps to be put in place. They were unsuccessful  
7 at getting a nine-month extension and instead entered into a  
8 shorter-term extension where the lenders on those two  
9 properties began cash traps.

10 Q. And those agreements for Fashion Show and Palazzo, are  
11 they still in place or have they expired?

12 A. The forbearance agreements on Fashion Show and Palazzo  
13 have expired.

14 Q. With respect to both the Fashion Show and the Palazzo  
15 malls, do tenants still send their rent payments into the same  
16 lockbox as they did prior to the imposition of the trap?

17 A. Yes, and they send them into the same lockbox. From  
18 there, the Fashion Show and Palazzo lenders had a waterfall  
19 system where monies were, in effect, reserved in certain  
20 accounts for certain -- for certain expenses, and included in  
21 that was a budget of operating expenses. And once a month they  
22 provided funds to the debtor based on the budget for the  
23 debtor -- or for the parent -- it wasn't the debtor at the  
24 time -- but for the parent, GGPLP, to take those funds and then  
25 invest them and then utilize those funds to make the payments

1 on behalf of those properties.

2 So, in effect, while those lenders claimed that they had a  
3 cash management system, in effect they just inserted themselves  
4 into the debtors' cash management system and they continued to  
5 use the debtors' cash management system even after entering  
6 into the forbearance agreement.

7 Q. Before the imposition of the trap for Fashion Show and  
8 Palazzo, how would the debtors pay interest to the lender for  
9 those properties?

10 A. The debtors would have paid interest directly. After the  
11 trap, I believe a specific subaccount was set up by the Fashion  
12 Show and Palazzo lenders to reserve cash for that interest.  
13 And I believe they took that -- they would clear that account  
14 and pay the interest directly themselves.

15 Q. And before the trap was put in place?

16 A. Before the trap was put in place, all monies from the  
17 Fashion Show and Palazzo -- or the system operated as I  
18 described. The general system receipts went into -- rent  
19 receipts went into a lockbox, it swept up to the parent, and  
20 the parent paid all costs of the facility.

21 Q. All right. Let me turn, if I could, to intercompany  
22 accounting. Do the debtors track the movement of cash between  
23 entities?

24 A. Yes, they do. The debtors utilize an accounting system, a  
25 general ledger ERP software package known as JD Edwards. And

1 each of the individual property operations and certain  
2 suboperations maintain separate general ledger -- you know,  
3 business unit-level general ledgers at each of the -- at each  
4 of the malls, which then, in effect, are consolidated to report  
5 the company's consolidated results.

6 When -- so when -- the way that then works in turn with  
7 the company's cash system is when receipts -- or our rent  
8 receipts are received at the mall level and deposited into the  
9 lockbox, that creates a journal entry at the property level,  
10 which is effectively a debit of cash and a credit of rent  
11 receivable or accounts receivable. And then when the money is  
12 swept up to the parent, it's a credit to cash and debit to the  
13 intercompany account. And the -- each of these individual  
14 subledgers or ledgers at the mall level and at the corporate  
15 level up top maintain an intercompany account where all of this  
16 sort of activity, whether it's receipts coming in or payments  
17 being made, are captured in that system.

18 Q. The charges for expenses that are paid, are those -- do  
19 those cover both direct and indirect costs?

20 A. That is correct. When the company at -- when GGPLP pays  
21 the costs related to the individual properties, they are -- and  
22 including things like the payroll, as I mentioned earlier, the  
23 employees are actually employees of GGPLP, but they may work  
24 directly at the mall -- they are then charged to the  
25 intercompany account and in an accounting method that's nearly

1 reverse of the money coming up. The cash goes down through the  
2 intercompany account and then gets charged against the  
3 intercompany receivable at the property level. That would --  
4 that would be for direct costs.

5 There are also indirect costs that are also charged to the  
6 malls, and those would be for allocations. They could be  
7 allocations on things like -- the company, as I mentioned, does  
8 certain things on a centralized basis, like procuring property  
9 insurance. And the property insurance is paid as a single  
10 bill; it's not 200 separate property insurance policies. And  
11 then those are -- the cost of that is then allocated to the  
12 individual properties.

13 Also, there are certain of the corporate services that I  
14 described: leasing, accounting, legal, HR, property  
15 management, et cetera. A portion of those are also allocated  
16 to the properties as well, through the intercompany account.

17 Q. Are there protections in place to ensure the accuracy of  
18 intercompany accounting at the company?

19 A. The intercompany accounts are reviewed like any other  
20 account of the company in its ERP system. The company  
21 employs -- or, like all companies, they close their books on a  
22 monthly basis and review the accounts to make sure that they  
23 properly reflect the company's results. And on an annual basis  
24 the company is subject to audit on a consolidated level and on  
25 numerous levels below the consolidated level as well.

1 Q. Turn with me, if you would, Mr. Mesterharm, to Exhibit 7  
2 in your binder. And would you describe for us what Exhibit 7  
3 is?

4 A. Sure. Exhibit 7 is a cash forecast analysis to calculate  
5 how the debtors believe adequate protection is provided to the  
6 property-level lenders vis-a-vis their intercompany -- the  
7 intercompany account and the cash transferred up.

8 Q. Okay. Could you walk us through the analysis that you've  
9 done? Let's start with the April through December 2009 column.

10 A. Sure. In the April through December 2009 column, starting  
11 at the top, what we have done is we've grouped those properties  
12 which the company's forecasts show are positive contributors to  
13 the overall enterprise. And so what it would say is from April  
14 through December, after some income taxes, that those  
15 properties would, on a net basis -- that means cash flow up  
16 less costs paid on their behalf, less allocated costs -- would  
17 put up to GGPLP 421 million dollars.

18 Q. Would it be correct to say that that represents cash  
19 collateral of the secured lenders?

20 A. Yes. I believe so.

21 Q. Okay. Please go on.

22 A. The next sections are a series of entities which are  
23 either utilizing cash as opposed to providing it up, or  
24 properties which are first-lien properties of the DIP lender or  
25 proposed DIP lender. And so there is no pre-petition first

1       lien lender that adequate protection would be being provided  
2       to. And then there are also certain costs: unallocated costs  
3       or costs of the restructuring or costs of the DIP loan. And  
4       what they would say for the months of April through December:  
5       that the aggregate cost would be 219 million.

6       Q. Okay. And then the Sources of Cash section of the chart,  
7       Exhibit 7, what does that represent?

8       A. What this shows is the company's beginning cash position  
9       as of March 31 plus the excess proceeds of the DIP loan over  
10       the colla -- or over the refinancing of the pre-petition  
11       Goldman collateral. And it would say that the -- at the onset,  
12       the company would have roughly 325.7 million dollars.

13               What we then attempted to show is that that 325.7 million  
14       can clearly cover the 219 million of costs and properties that  
15       require funding, and then leaving, in effect, the 421 million  
16       provided up by the other property-level lenders, you know,  
17       available for adequate protection.

18       Q. And the 106.6 million dollars --

19       A. That would represent the cushion.

20       Q. Okay. And then explain for me, if you could, the next  
21       section of the table moving down, "Appraised Value of the  
22       Goldman Properties".

23       A. What we have also provided to the property-level lenders  
24       for adequate protection is a second lien on the Goldman -- the  
25       pre-petition Goldman loan properties, which would have been

1 refinanced out by the DIP. So it's a specific pool of  
2 properties that the pre-petition first lien lenders would get a  
3 second lien on that in regards to their adequate protection.

4 And so the company recently received an appraisal of those  
5 properties performed by Cushman & Wakefield, and they appraised  
6 that -- those properties at 609 million.

7 MR. ZIRINSKY: Objection.

8 (Pause)

9 MR. STROCHAK: Would you like a response, Your Honor?  
10 I'm sorry.

11 THE COURT: It certainly is -- it is hearsay. But in  
12 terms of the company's -- the numbers and the company's putting  
13 together their numbers, he can certainly testify as to what  
14 they received. As to whether or not there's any basis for it,  
15 we'll have that in due course.

16 MR. ZIRINSKY: Thank you.

17 Q. Just to move forward a second, if you would turn back one  
18 exhibit in your binder, Mr. Mesterharm, to Exhibit 6.

19 A. Yes.

20 Q. I'm sorry. What's Exhibit 6?

21 A. Exhibit 6 is an appraisal performed by Cushman & Wakefield  
22 on the Goldman properties.

23 Q. That's the appraisal you mentioned?

24 A. That's correct.

25 Q. And is an appraisal of this type something that you would

1 typically rely upon in preparing a financial analysis for use  
2 in a bankruptcy proceeding such as this?

3 A. Yes.

4 Q. Let me roll you forward to Exhibit 7 again, your analysis.

5 A. Yep.

6 Q. And let's just -- bring me, if you could, to the  
7 conclusion in the April - December 2009 column, the 315.7  
8 number.

9 A. Sure. If you take the value of the appraised assets --

10 THE COURT: Whosever online will have to either hang  
11 up or pick up or just have to -- I think we'll have to -- we'll  
12 have to just close the line. All right. All right, go ahead.

13 A. Okay. The appraised value is indicated by the Cushman &  
14 Wakefield appraisers on the Goldman properties, or 609 point --  
15 609 million. The DIP loan that we have been working with, the  
16 proposed DIP loan, is 400 million. So it would indicate that  
17 there is excess value above the Goldman -- or what would be  
18 above the DIP loan of 209.1 million, which would be available  
19 for the -- to honor the second lien.

20 And so the 315 represents the excess of the cash above  
21 funding those properties. And the corporate costs that are  
22 unallocated that need funding and the cost of the case, the  
23 professionals and the DIP, plus the excess value of the Goldman  
24 property, equals 315.7 million dollars.

25 Q. Thank you. Push that ahead for me, if you would, to 2010.



1 And could you explain, are there any differences in the  
2 analysis for 2010?

3 A. Well, 2010 is for a full year and obviously is relying on  
4 the 2010 projections. But what it shows is that if you roll  
5 forward the beginning excess cash of 106, you know, that was  
6 left after covering the 219 million of costs for April through  
7 December, that the -- there would actually be a shortfall in  
8 2010 of 65.5 million in covering it just from cash. And at  
9 that point you would start to utilize some of the Gold --  
10 excess value of the Goldman collateral, and you'd still be left  
11 with a 143.6 million dollar cushion.

12 Q. And that represents December 31, 2010?

13 A. That is correct.

14 Q. Okay.

15 MR. STROCHAK: Your Honor, we would offer,  
16 provisionally, Exhibits 6 and 7. The foundation for Exhibit 6,  
17 Your Honor, the Cushman appraisal, is Rule 703 -- it's relied  
18 upon; it's reasonable reliance under these circumstances -- or  
19 Rule 807, the catch-all exception. And as I indicated  
20 previously, Mr. Latella from Cushman & Wakefield is here and he  
21 is available. We didn't think it was necessary under the  
22 circumstances for an adequate protection analysis. But if  
23 there is going to be an objection, he is here and can lay a  
24 foundation for the admission of that appraisal.

25 THE COURT: All right, let's take Exhibit 7 first.

1 Exhibit 7 is the company's cash forecast analysis with whatever  
2 information they've deemed appropriate to make in their own  
3 analysis. Any objections?

4 MR. ZIRINSKY: Just the same objections, Your Honor,  
5 as to hearsay and as to the fact that it includes assumptions  
6 regarding the DIP loan.

7 THE COURT: Does -- have you ever heard of a cash  
8 flow analysis that doesn't assume certain assumptions?

9 MR. ZIRINSKY: Well, since there isn't --

10 THE COURT: Have you -- answer my question. Yes or  
11 no?

12 MR. ZIRINSKY: No.

13 THE COURT: All right. Fine.

14 MR. ZIRINSKY: As long as my rights are reserved with  
15 regard to those numbers, that's fine.

16 THE COURT: Your rights are reserved to cross-  
17 examine. As to admitting Exhibit 6, I'd only admit it as --  
18 for the limited purpose of showing what they relied on. And if  
19 we want to take the time to have the witness testify today, we  
20 can. But it seems to me parties might spend their time better  
21 -- but maybe while everyone's here we should have him come  
22 forward. I'll leave it to the parties. He can perhaps testify  
23 generally as to how he provided the appraisals. But I do think  
24 parties should have a little more time to look at their own  
25 information. I take very seriously counsel's statement that

1 they had been looking for information for some time. We are  
2 dealing with a huge number of properties and we're trying to be  
3 both as fair as we can to individual lenders without letting an  
4 important process get off -- not off track but get subverted  
5 for reasons that will be deleterious to the estates as a whole.

6 So, for limited purposes, I would admit, very limited  
7 purposes, Exhibit 6. Exhibit 7 is the debtors' cash flow  
8 analysis.

9 (Debtors' Exhibit 6, Cushman & Wakefield appraisal, was hereby  
10 received into evidence as of this date.)

11 (Debtors' Exhibit 7, GGPLP cash flow analysis, was hereby  
12 received into evidence as of this date.)

13 MR. STROCHAK: Thank you, Your Honor.

14 BY MR. STROCHAK:

15 Q. Mr. Mesterharm, turn with me to Exhibit 5, if you would.

16 And could you explain, sir, what Exhibit 5 is?

17 A. Exhibit 5 is another line chart which is showing what the  
18 company expects its liquidity position to be over time with the  
19 revised DIP -- again, that would be the Farallon Group DIP --  
20 versus what it would be -- what the company's liquidity would  
21 position -- position would be with the revised DIP if, in fact,  
22 the company, for adequate protection, was required to pay two  
23 percent default interest on all of its defaulted pre-petition  
24 loans where adequate protection was required, and also if --  
25 and, further, if we also had to pay the amortization that

1 exists on those loans as well. And what that would show is  
2 that the company would run out of funds, you know, and, if they  
3 had to make both those payments, would run out of funds in June  
4 of 2010. And if they only had to pay the default interest,  
5 they would skate precariously close -- you know, after the same  
6 period and, you know, through the balance of 2010, would get  
7 down below fifty million in liquidity.

8 Q. Let me turn to a different topic.

9 MR. STROCHAK: Actually, Your Honor, provisionally we  
10 offer Exhibit 5.

11 THE COURT: Anyone wish to be heard? We'll enter it  
12 on the same basis as the other exhibits.

13 (Debtors' Exhibit 5, line chart re liquidity provision, was  
14 hereby received into evidence as of this date.)

15 Q. Turning to a different topic, Mr. Mesterharm, do the  
16 debtors, from time to time, modify leases, easement agreements  
17 and other property documents that they enter into with their  
18 tenants and other customers?

19 A. Yes, they do.

20 Q. Under what circumstances?

21 A. The debtors, from time to time, enter into  
22 discussions/negotiations with a various number of tenants who  
23 are seeking to modify leases either to extend those leases,  
24 seeking rent relief, seeking mutual termination rights, and  
25 things along those lines that are very customary in this

1 business when you're managing a portfolio of properties and a  
2 portfolio of leasing relationships.

3 Q. What's the significance of those transactions to the  
4 debtors' ability to conduct business in the ordinary course?

5 A. Those -- the ability to continue to conduct business in  
6 the way that the company conducts business regarding these  
7 leasing negotiations is critical to the maximization of value  
8 of the debtors.

9 Q. And what particular benefits does it provide for the  
10 company to be able to enter into these agreements in terms of  
11 populating its malls with tenants?

12 A. Well, as I said, in the pa -- in earlier discussion, the  
13 lenders manage the business on a centralized business. They  
14 conduct negotiations with the tenants, you know, on a portfolio  
15 basis. The tenants prefer to work with the company that way  
16 where they can come in and discuss all of their individual  
17 locations that exist across GGP's platform. And as such, from  
18 time to time, the company needs to enter into agreements with  
19 the mall -- with these tenants to modify the agreements.

20 An example would be an example where a tenant may have  
21 certain rights under the leases, such as a termination right  
22 due to a kick-out, meaning that certain performance metrics  
23 weren't made, and so they had the ability to terminate the  
24 lease. In other instances, there may be some leases that are  
25 maturing.

1 And through this portfolio review process, they oftentimes  
2 are required to modify a number of leases where, in order to  
3 avoid, you know, a lender triggering a kick-out, we may need to  
4 agree to a rent reduction where the alternative would be that  
5 the company give up a hundred percent of the subsequent  
6 leases -- lease revenues under that lease. This way the debtor  
7 is able to renegotiate and effect the lease and maybe for a  
8 lesser payment. But in return for that, they generally seek an  
9 extension of the lease and so they can recoup some of what they  
10 gave up, or they make kick more of the lease over to a  
11 percentage-based lease where, if the underlying tenant actually  
12 performs at a higher level, they're able to, again, recoup some  
13 of the relief that they granted.

14 Q. Has the company experienced any reaction from tenants and  
15 other -- you know, other of its customers regarding these types  
16 of arrangements since the Chapter 11 filing?

17 A. Absolutely. As -- you know, the company meets with its  
18 tenants regularly and conducts negotiations on a variety of  
19 time frames on its overall leasing portfolio. You know, there  
20 have been a number of amendments that the company would like to  
21 enter into that are currently pending approval of this order  
22 from the Court so that the company can continue to operate its  
23 business as it has in the past. The tenant relationships are,  
24 you know, the lifeblood of the company. The rent's generated  
25 by the company. And the tenants really -- this is a way of

1 doing business in this industry. And it's critical for us to  
2 get this level of relief from the automatic stay to be able to  
3 continue to operate in a fashion that's consistent with  
4 industry practices.

5 UNIDENTIFIED SPEAKER (TELEPHONICALLY): Excuse me,  
6 some of us on the phone can't hear what's being said.

7 MR. STROCHAK: Maybe if you just --

8 THE COURT: All right, we'll --

9 MR. STROCHAK: -- speak a little closer to the  
10 microphone.

11 Q. Let me turn you back, if I could, to just go back one  
12 second over a different topic and back to Exhibit 7, if you  
13 would. Exhibit 7, your cash forecast analysis on the adequate  
14 protection, is it correct that that was based on what we've  
15 called the Farallon debtor-in-possession financing proposal?

16 A. That is correct.

17 Q. If a new debtor-in-possession financing results in a lower  
18 interest rate than the Farallon proposal, what does that do to  
19 your analysis in Exhibit 7?

20 A. It would improve it as -- the line referred to as "DIP  
21 Interest" would be a reduction.

22 THE COURT: Can you hear that on the phone?

23 UNIDENTIFIED SPEAKER: Yes, Your Honor.

24 THE COURT: All right. Please follow up.

25 A. And if the DIP interest was reduced, obviously the cost

1 that'd need to be funded by the DIP and by the company's excess  
2 cash at the beginning of the case would have more surplus if  
3 they didn't have to pay as much DIP interest.

4 Q. Thank you.

5 MR. STROCHAK: Your Honor, just for clarification, I  
6 had Mr. Mesterharm go over some of the tenant issues, and  
7 that's because the testimony here supports the tenant piece of  
8 the adequate protection package.

9 Your Honor, with that, we would pass the witness for  
10 cross-examination.

11 THE COURT: All right. I think the only cross-  
12 examination that would be helpful today is that that's aimed  
13 precisely at the cash collateral issues, keeping in mind that  
14 whatever cash collateral determination is made today is a  
15 tentative and -- not tentative, but is subject to revision for  
16 cause shown as we go through the case. Does anyone wish to  
17 examine?

18 UNIDENTIFIED SPEAKER: No, Your Honor.

19 MR. CROSS: Your Honor, I have a --

20 THE COURT: All right, do you want --

21 MR. CROSS: I have a question, just a question.

22 THE COURT: All right. You'll come to the witness  
23 stand, please.

24 MR. CROSS: I mean, in deciding a course of action,  
25 you probably saw lots of whispers. We -- because everything's



1       been merged, we don't even have a proposed form of cash  
2       collateral order because the order we have includes DIP and  
3       cash collateral.

4               THE COURT: That is correct.

5               MR. CROSS: And we're not trying to be difficult. It  
6       just becomes very -- it becomes very difficult for us to  
7       assess -- we would prefer to just reserve all of our questions  
8       and come back and deal with it later.

9               THE COURT: All right.

10              MR. CROSS: But by doing that, we don't want to  
11       consent to cash collateral. We're happy with interim cash  
12       collateral for the next hearing and decide what we need to do.  
13       But we don't even know what to question on because we don't  
14       know what order this is supposed to be supporting. And it's  
15       very difficult where we currently sit.

16              THE COURT: Well, I think the testimony can obviously  
17       be used for both DIP and cash collateral purposes. But the  
18       only thing I'm considering today is cash collateral. And I  
19       understand the difficulty, and I agree with it only to the  
20       extent that, as I've said on several occasions, cash collateral  
21       is a -- by definition, not forever. It can be amended. And --

22              MR. CROSS: And we don't want to impede the debtors'  
23       business operations. We want them to continue to have cash  
24       collateral in the near term --

25              THE COURT: All right.

1 MR. CROSS: -- just in --

2 THE COURT: What about -- now, you're speaking for  
3 the lenders generally, but obviously any lender may speak up.  
4 What are we going to do with the tenant improvements order  
5 today? The debtors have made a number of revisions to it; I  
6 believe they would say in an effort to be responsive to some of  
7 the objections and the comments.

8 MR. CROSS: I had -- actually had one of the  
9 objections to the tenant improvements order, so I can speak to  
10 that.

11 THE COURT: All right.

12 MR. CROSS: The debtor accommodated our objections.  
13 Those accommodations are inserted in the cash collateral order;  
14 they're not in the tenant order. I actually made a call and  
15 said can we put them in the tenant order so -- we can have them  
16 in both, but let's have it in the tenant order. The debtor was  
17 not -- rejected that idea.

18 I had one issue with respect to some additional  
19 provisions that were added to the cash collateral order dealing  
20 with that, but they were not dealing with just getting lender  
21 consent to tenant changes in leases.

22 This business needs to continue to operate; we  
23 recognize that. The tenant -- the debtor needs to continue to  
24 deal with lessees; we recognize that. The debtor has said that  
25 it will continue to comply with loan documents in the tenant

1 obligations order; we are fine with that. We'd ask for the  
2 same consent rights for each lender as -- or given to the  
3 committee to the extent they're additional. But that's it.  
4 That's where it stops.

5 THE COURT: All right.

6 MR. CROSS: So -- and with that order, I think we  
7 have an order with -- you know, with just putting --

8 THE COURT: Well, we don't have necessarily the form  
9 of an order, but let me see whether anyone has any other -- any  
10 remaining objections to the tenant improvements order, not to  
11 the form of the order, because I think that has -- parties have  
12 a right to see the final order, but to the principles in the  
13 order.

14 MR. CROSS: And to -- just before I leave the podium,  
15 and I won't monopolize, there are two provisions in there  
16 dealing with SNDAs and capping fees for approval. Those --  
17 it's unclear whether the debtor means to leave those just in  
18 cash collateral or make them part of the tenant order. They  
19 were never part of the tenant order, nor were they part of  
20 objections. So I'm unclear where they go. The SNDA form of  
21 agreement that is attached I think many of the lenders would  
22 have objection to because it obligates the lender to undertake  
23 obligations that it would normally not do.

24 But that narrow piece was added in by the debtor, and  
25 we're not sure where it falls. To the extent the debtor said,

1 I'm going to comply with loan documents just as I did pre-  
2 petition, please allow me the discretion to get on with it,  
3 we're fine with it. My clients are fine with it. We can see  
4 if anyone else has an objection.

5 THE COURT: All right.

6 MR. HOLTZER: Your Honor, would it be helpful if I  
7 just clarify for the rest --

8 THE COURT: Sure.

9 MR. HOLTZER: Gary Holtzer for Weil, Gotshal &  
10 Manges. The comment was made that the form of SNDA attached  
11 may be objectionable. I believe, and my colleagues will  
12 correct me if I'm wrong, that the document that's attached is  
13 the document that was attached to the form of DIP and that it  
14 says that it will either be the form that's in a loan document,  
15 if it happens to have one of those, or that form, right? So if  
16 there was a pre-negotiated form, as counsel refers to, so that  
17 the record is clear, what the debtors are saying is that they  
18 will comply with the loan agreements, including any attached  
19 form, okay?

20 MR. CROSS: And that's why -- it's just that --

21 MR. HOLTZER: Let me just finish for a moment,  
22 please, all right? And that we added this to answer counsel's  
23 second question, right, about where it should go in the  
24 documents as a response to the dialogue that we had with people  
25 about things that were important to them. We added this as a

1 part of the adequate protection package and believe it should  
2 go in the adequate protection order, Your Honor.

3 THE COURT: All right.

4 MR. CROSS: And I want to be clear; it's just those  
5 instances where it's not attached to the loan agreement, that  
6 we have a concern because the form was just --

7 THE COURT: I think --

8 MR. CROSS: I wasn't trying to --

9 THE COURT: I think both parties understand that.

10 All right, otherwise, does anyone wish to be heard on  
11 the tenant improvements order? Maybe we can put that behind  
12 us.

13 MR. GOTTESMAN: Once again, this is just a point of  
14 clarification, Your Honor. It's a little bit unclear whether  
15 the notion of a qualified tenant would seem to have come in  
16 as -- into the process. And, you know, I'm a little but  
17 unclear as to where it goes. It would seem to undercut the  
18 notion of the consent rights that were being given, on the one  
19 hand, with respect to honor in the loan document provisions.  
20 There is, I think, a difference of opinion on the lender side  
21 of the table as to whether or not what the debtor would call  
22 qualified tenants comports with what the loan agreements would.

23 And as long as that issue's reserved for another day,  
24 we're fine with the tenant improvement order, Your Honor. If  
25 some -- if that's now going in there, and it's still unclear to

1 me which -- I'm not sure that it's of form or substance, as  
2 Your Honor has bifurcated that issue. But clearly we don't  
3 want to be in a position where simply anyone who has a regional  
4 or national presence, as the debtor describes it, is now deemed  
5 to be a qualified tenant irrespective of what the loan  
6 documents say.

7 THE COURT: All right.

8 MR. HOLTZER: Your Honor, again, Gary Holtzer.  
9 Nothing is irrespective of what the loan documents say if the  
10 loan documents speak to this.

11 THE COURT: If the loan documents speak to it, I  
12 gather it's the debtors' position that they're part of the loan  
13 documents.

14 MR. GOTTESMAN: And even if it's just up to our  
15 discretion, as I take it?

16 THE COURT: If -- I suppose so, but I am open for  
17 business. I certainly don't look forward to the question of  
18 approving tenants for -- how many properties?

19 MR. STROCHAK: Two hundred malls, Your Honor.

20 THE COURT: Two hundred malls. But I think perhaps  
21 those tenants who I come in contact with professionally from  
22 this bench are probably not the tenants who we're looking for.

23 MR. GOTTESMAN: That's precisely our concern, Your  
24 Honor. That's precisely our concern.

25 THE COURT: I'm sure that's your concern, and forgive

1 me if some of my comments today reflect the fact that I would  
2 like everyone in this room to recall that we're talking  
3 about -- no matter how hard-fought this is, and there is  
4 concern on the lenders' side, I realize, about getting caught  
5 up in a complex case, but we are dealing with positive numbers,  
6 positive cash flow. The debtors said in their early papers  
7 that the problem wasn't with tenants who weren't paying, for  
8 the most part. They probably have some, but the numbers here  
9 are numbers that most of the other parties who come to this  
10 room would be delighted to see.

11 And, therefore, I think the overall perspective  
12 should be taken -- I'm sure they'll be taken into account by  
13 the parties as they protect their respective party -- their  
14 respective clients' interests overall. But we have in this  
15 room many secured lenders represented. We also have an  
16 enormous amount of unsecured debt. And we have an equity as  
17 well. And I'm sure that the Bankruptcy Code provides the  
18 mechanism for adjusting all of those interests and protecting  
19 the rights of those whose rights are properly protected while  
20 not impinging on others'.

21 In any case, on the tenant improvements order,  
22 perhaps we have an order in principle and the debtors can  
23 circulate to all interested parties a final form of order. If  
24 there's an issue on the form of order, I'm sure I'll hear about  
25 it on Tuesday. But I certainly hope by Tuesday we can enter

1 that order, and the debtor can at least put this small piece of  
2 this puzzle behind it.

3 MR. STROCHAK: Thank you, Your Honor.

4 MR. MEYERS: Your Honor, may I be heard on the tenant  
5 motion?

6 THE COURT: Oh --

7 MR. MEYERS: Very quickly.

8 THE COURT: Of course.

9 MR. MEYERS: And hopefully this order -- the order  
10 will resolve this clarification too. Todd Meyers for ING  
11 Clarion. We did file an objection to the tenant motion. We  
12 are satisfied with the debtors' proposed resolution by giving  
13 us the consent rights, but there was one --

14 THE COURT: Consent rights that you have?

15 MR. MEYERS: The consent rights that we have,  
16 correct.

17 THE COURT: Pre-petition?

18 MR. MEYERS: Correct. But there's one point that we  
19 raised, and we weren't sure that this was addressed, and that  
20 is that the debtors are asking for the Court, under the  
21 doctrine of necessity, to approve the satisfaction, however  
22 they satisfy it, by writing a check or lease modifications, to  
23 satisfy the debts they owe to their tenants. And we are okay  
24 with that, but some -- the incur --

25 THE COURT: I assume so, and the unsecured creditors'



1 committee, which is certainly entitled to be heard on that  
2 issue, believes this to be an important enough matter for the  
3 debtors to spend the money.

4 MR. MEYERS: Right. Very much so, Your Honor. All  
5 we want to make clear, though, and we don't know that this  
6 resolution made clear, is that if the incurrence of the  
7 obligation required our consent, as often a tenant improvement  
8 would, that we were given that consent right pre-petition, and  
9 if not, that the debtor won't be authorized to do that without  
10 our consent now. In other words, if two days before the  
11 bankruptcy the debtor entered into a lease that would have  
12 required our consent and they didn't get it and they agreed to  
13 build ten stories onto a mall, we don't want this order to  
14 bless them to satisfy that debt.

15 THE COURT: All right. Mr. Holtzer?

16 MR. HOLTZER: Your Honor, counsel is confusing tenant  
17 improvements with our provisions regarding our leasing  
18 practices. On tenant improvements, we asked in our original  
19 motion, we stand here today asking, for approval to pay the  
20 pre-petition tenant improvements that we cited in there. We  
21 discussed it with the creditors' committee. It has nothing to  
22 do with the consents by the landlords. Those are the tenant  
23 improvements, right? And those are all the pre-petition tenant  
24 improvements.

25 Secondly -- separately, not secondarily, on the

1 leasing side, that's where we've agreed to abide by the  
2 documents and obtain consents, but not on tenant improvements.  
3 We've asked for a universe of them; we've discussed it with the  
4 committee. It involves the payment of certain funds or  
5 satisfaction with respect to pre-petition tenant improvement  
6 obligations under the leases. If we enter into a new lease  
7 going forward, it's a post-petition lease.

8 THE COURT: And the lender will be informed of your  
9 intention to enter into the post-petition lease?

10 MR. HOLTZER: The lender will be --

11 THE COURT: If they're entitled to it under the  
12 documents.

13 MR. HOLTZER: Yes. If we're going to enter into a  
14 post-petition lease --

15 THE COURT: All right.

16 MR. HOLTZER: -- we'll be within the leasing  
17 provisions.

18 THE COURT: All right.

19 MR. MEYERS: Again, Your Honor, I don't think I'm  
20 confusing them. The -- my debtors, my eight debtors -- or nine  
21 debtors, but for eight properties, had certain obligations to  
22 get consent of the servicers before they could incur these  
23 debts. And the motion sought for you to approve so that they  
24 could satisfy these debts. And if they didn't get our consent,  
25 then we object to your approving them satisfying those debts

1 without our consent.

2 THE COURT: I thought the debtors were going to  
3 follow the provisions of the agreements with regard to such  
4 expenditures. Is that correct or incorrect?

5 MR. HOLTZER: No, we're going to follow the leases,  
6 Your Honor, with res -- we're going to follow the loan  
7 agreements, Your Honor, with respect to the entry into of  
8 leases.

9 THE COURT: But not --

10 MR. HOLTZER: Amendments --

11 THE COURT: Yes?

12 MR. HOLTZER: -- as well.

13 THE COURT: But not tenant improvements?

14 MR. HOLTZER: No. Give me a moment, Your Honor.

15 (Pause)

16 MR. HOLTZER: Your Honor, on tenant improvements, I  
17 don't think our pleadings address that, and so we hadn't put  
18 that forward. We're happy in the dialogue, on a go-forward  
19 basis, with the secured lenders to talk about that facet.

20 THE COURT: Well, maybe we'll have to adjourn the  
21 matter till Tuesday. I had thought that you were going to  
22 follow the provisions of the loan agreements with regard to  
23 tenant improvements.

24 MR. HOLTZER: Give me just a moment, Your Honor.

25 THE COURT: But I may be wrong. Is that -- was that

1 your --

2 UNIDENTIFIED SPEAKER: That was my understanding.

3 MR. HOLTZER: There was a --

4 UNIDENTIFIED SPEAKER: May I be heard?

5 THE COURT: Sure.

6 UNIDENTIFIED SPEAKER: There was an earlier motion  
7 with respect to a million dollars, but it only dealt with two  
8 problems.

9 (Pause)

10 MR. HOLTZER: Your Honor, so that we're clear, and  
11 counsel will correct me if they don't misunderstand, our  
12 approach is that on tenant allowances we are going to comply  
13 with the loan documents, if that's what the question is. Is  
14 that your question?

15 UNIDENTIFIED SPEAKER: Yes.

16 MR. HOLTZER: That's the answer.

17 THE COURT: That's what I --

18 UNIDENTIFIED SPEAKER: That's what we thought.

19 THE COURT: That's what I thought too.

20 MR. HOLTZER: Yeah.

21 THE COURT: If there's a dispute, I'm sure that I'll  
22 hear --

23 UNIDENTIFIED SPEAKER: I'm sure you will.

24 THE COURT: I hope not. All right. But, well, I  
25 think we can circulate a form of order on tenant improvements.

1 Or am I wrong?

2 UNIDENTIFIED SPEAKER: No, Your Honor. Maybe I stood  
3 up prematurely. I had some questions for Mr. Mesterharm on the  
4 cash collateral.

5 THE COURT: All right. Well, you have somebody ahead  
6 of you.

7 MR. BRANDT: Your Honor, I wasn't clear. Are we  
8 going to reserve cross for --

9 THE COURT: You can certainly reserve cross for  
10 another day.

11 MR. BRANDT: Would that be for Tuesday or --

12 THE COURT: For Tuesday. You represent Prudential?

13 MR. BRANDT: I represent Deutsche Bank, Your Honor --

14 THE COURT: Deutsche Bank.

15 MR. BRANDT: -- which is the administrative agent for  
16 the loans on the Palazzo and Fashion Show.

17 THE COURT: With Mr. Rosenberg?

18 MR. BRANDT: With Mr. Rosenberg.

19 MR. ROSENBERG: James Brandt, Your Honor. But I  
20 still --

21 THE COURT: All right.

22 MR. BRANDT: I spoke more quickly yesterday.

23 THE COURT: I think that all cross can be reserved  
24 until Tuesday, as necessary. And perhaps parties will be  
25 better prepared by then.

1 Yes?

2 MR. GOTTESMAN: I'm just following up on that  
3 suggestion. There -- obviously there's not -- there will not  
4 be cross, and a number of exhibits were admitted today  
5 provisionally. Your Honor's remarked on a number of times this  
6 afternoon that cash collateral could be revisited. You alluded  
7 to changes in circumstances. I just want to put on the record  
8 that those changes in circumstances might include additional  
9 evidence brought out on that eventual cross-examination and  
10 Your Honor's reconsideration of some of that provisional  
11 admittance into evidence of some of those exhibits if and when  
12 that's appropriate, Your Honor.

13 THE COURT: All right.

14 MR. BRANDT: Your Honor, as long as I'm here, I'll go  
15 ahead. I mean, I'll just be two minutes.

16 THE COURT: If you have a couple of questions that  
17 you think will clarify the issues for today, you certainly can  
18 ask them. You lose no rights by reserving.

19 MR. ZIRINSKY: Your Honor, and that's -- if I may,  
20 Your Honor. Bruce Zirinsky. I just want to clarify. Your  
21 Honor does not intend to rule on cash collateral use today?

22 THE COURT: I intend to give you some of my  
23 preliminary remarks on cash collateral use today; the parties  
24 can use them as they wish. We will not enter an order, because  
25 we don't have an order, and as long as there's no objection to

1 continuation of the interim order until we enter or we refuse  
2 to enter a DIP. That's what the debtors originally requested,  
3 and we'll put that in place today, assuming they won't object.

4 MR. ZIRINSKY: And parties reserve the right to  
5 cross-examine on another day?

6 THE COURT: Absolutely.

7 MR. ZIRINSKY: Thank you, Your Honor.

8 THE COURT: If anybody has two minutes of  
9 examination, they may. But if it relates to a particular loan,  
10 like the Fashion Mall loan, it seems to me that it is better  
11 reserved. But two minutes is two minutes.

12 Go ahead. You're already at the podium. I  
13 understand that you have a particular provision, and indeed the  
14 debtors had in their exhibit book, but did not introduce, your  
15 letter staking out your position.

16 CROSS-EXAMINATION

17 BY MR. BRANDT:

18 **Q. Mr. Mesterharm, do you -- I've handed you two documents;**  
19 **I've identified them as DB-1 and DB-2. Do you recognize them?**

20 MR. STROCHAK: Might I ask for a copy, Your Honor?

21 (Pause)

22 **A. They appear to be cash management agreements regarding the**  
23 **Fashion Show and Palazzo properties.**

24 **Q. Have you ever seen them before?**

25 **A. I have not seen these.**

1 Q. You never read the agreements -- you testified a little  
2 bit about Fashion Show and Palazzo on direct. You've never  
3 read the agreements that govern cash management with respect to  
4 either of the properties?

5 A. I testified about how the cash moves. I didn't testify as  
6 to these documents.

7 Q. Okay. So just to be clear, you've never seen either DB-1  
8 or DB-2?

9 A. No, I have not.

10 MR. STROCHAK: Asked and answered, Your Honor.

11 Q. Okay. I noticed that the agreement -- you mentioned --  
12 you used the word "cash traps" a lot on direct with respect to  
13 Fashion Show and Palazzo. The agreement is called Cash  
14 Management Agreement. Did you know that it was called Cash  
15 Management Agreement?

16 A. Well, as I said, this is the first time I'm seeing them.  
17 So -- and that is what they are entitled.

18 Q. Okay. You testified a little bit on direct about the fact  
19 that the forbearance agreements with respect to Palazzo and  
20 Fashion Show expired. Do you know whether the cash management  
21 agreement with respect to Palazzo or Fashion Show expired?

22 A. I believe they did --

23 Q. Well --

24 A. -- with the forbearance.

25 Q. Well, you've got it in front of you. Do you want to take



1 a quick look? Would it surprise you to know that they didn't  
2 expire, either cash management agreement?

3 THE COURT: Are you now arguing with the witness or  
4 are you asking him questions?

5 MR. BRANDT: I'm asking.

6 THE COURT: The question, does he know as he sits  
7 here today --

8 MR. BRANDT: Do you know.

9 THE COURT: Mr. Mesterharm, do you know as you sit  
10 here today?

11 Q. Do you know as you sit here today whether the cash  
12 management agreements for Palazzo or Fashion Show expired?

13 A. I do not know.

14 Q. Okay, let's look at pages 12 and 13 of the agreement.

15 A. Which one?

16 Q. Why don't we take Fashion Show?

17 THE COURT: If you're going to argue with him as to  
18 the import of a document of this nature, for purposes of this  
19 hearing I don't think you need to -- you can make your point.  
20 I gather your point is that if I read a section of this  
21 agreement it will show me that the cash management did or  
22 didn't expire. Is that the point of this two minutes of  
23 testimony --

24 MR. BRANDT: Well --

25 THE COURT: -- that you referred to?

1 MR. BRANDT: Well, and the fact, Your Honor, that the  
2 agreement provides directly how cash is supposed to be handled  
3 and not swept up to the parent. And I was going to ask the  
4 witness whether he had information that anybody on the debtors'  
5 side, during the course of the cash management agreement, had  
6 told Deutsche Bank that the agreement wasn't being honored.

7 THE COURT: Let's get a question.

8 Q. Okay, the question is did anybody on the debtors' side  
9 tell Deutsche Bank during the pre-petition time when the cash  
10 management agreement governed that the debtor was not honoring  
11 the agreement in the way of how cash was being handled?

12 A. No, I believe, from the point in time that this new cash  
13 management system was -- or this new system was put in place,  
14 that the company did honor it. But I believe that Deutsche  
15 Bank did not, 'cause if they were supposed to honor it they  
16 would have funded the company's disbursements on May 1, and  
17 they did not. So I believe not only did they violate the  
18 interim -- or the order on cash collateral on an interim basis;  
19 they also violated this agreement if -- because they didn't  
20 provide the company the funds to pay the costs on May 1.

21 Q. The agreement you haven't read?

22 A. (No audible response.)

23 Q. All right.

24 MR. BRANDT: I have no further questions, Your Honor.

25 MR. SAMSON: Your Honor, just for the record --

1 THE COURT: Come to the podium, please.

2 MR. SAMSON: Paul Samson for the 2008 facility  
3 lenders. Since, in discussion after I indicated that I would  
4 have some questions, the Court and other parties indicated  
5 reservation till Tuesday would be fine, I will reserve my  
6 questions until Tuesday.

7 THE COURT: All right. Thank you.

8 CROSS-EXAMINATION

9 BY MR. ROSEN:

10 Q. Good afternoon, Mr. Mesterharm.

11 MR. ROSEN: Your Honor, Sanford Rosen for FRM Funding  
12 Company. We are a mortgage lender to Fox River Shopping  
13 Center.

14 Q. Mr. Mesterharm?

15 A. That's correct.

16 Q. I just have a couple of questions for you. Are you  
17 familiar with the reply that the debtors' counsel interposed to  
18 the various objections that were raised with respect to the  
19 debtors' motion to approve financing and use cash collateral?

20 A. I am.

21 Q. You are?

22 A. I am.

23 Q. Did you read it?

24 A. Yes, I did.

25 Q. Okay. One of the proposed forms of adequate protection

1 that is being proposed, which I assume is going to be obtained  
2 assuming the Court is going to authorize the use of cash  
3 collateral from today until some adjourn date, is that -- and  
4 I'm referring to paragraph 25. It says specifically, "The  
5 adequate protection liens to be provided to the adequate  
6 protection parties now include, in addition to the adequate  
7 protection described in the motion," and this is what I want  
8 you to focus on, "a continuing, valid, binding, enforceable and  
9 automatically perfected post-petition security interest in and  
10 lien on (i) the cash in the main operating account and (ii) a  
11 silent second lien on the properties currently securing the  
12 pre-petition Goldman facility in an amount equal to the lesser  
13 of X the aggregate diminution in the value of the adequate  
14 protection parties' interest in the pre-petition collateral."  
15 And my question to you, sir, is could you tell me what FRM  
16 Funding Co.'s interest is in its pre-petition collateral, as  
17 you sit here today?

18 A. Are you asking me do I know who FRM --

19 Q. No --

20 A. -- is a lender to?

21 Q. No. I think you know that I'm not asking you FRM is. I'm  
22 asking you, with respect to our borrower, which is Fox River  
23 Shopping Center -- I assume you know who that is, do you not?

24 A. Yes.

25 Q. That's one of the debtors, right?

1 A. Um-hmm.

2 Q. Okay. So what I'm asking you is if you can tell me, as  
3 you sit here today, what is the value of FRM Funding Co.'s  
4 interest in the pre-petition collateral?

5 A. Are you asking me what's the value of the mall?

6 Q. Well, how do you define -- how do you define the interest  
7 in pre-petition cash collateral?

8 A. I'm not -- again, I'm not following your question.

9 Q. Well, do you have the reply in front of you? I'm not  
10 trying to --

11 A. No, I do not.

12 Q. -- give you a hard time. May I show it to you?

13 A. Sure.

14 THE COURT: I think we're wasting a lot of time here.

15 MR. ROSEN: We are?

16 THE COURT: That's a legal reply. You're quoting  
17 from the statute. If you want to ask him if he knows, as he  
18 sits here today, what he believes the value of the mall is, you  
19 can ask him that. And if he doesn't recall it, then that's  
20 that for today.

21 MR. ROSEN: I'll go along with that. I'll adopt  
22 that, Your Honor.

23 Q. Do you --

24 THE COURT: Do you know the value of the mall as you  
25 sit here at this moment?

1 THE WITNESS: No, I do not.

2 Q. Do you --

3 THE COURT: Thank you. That's all.

4 Q. Is that information available to you today?

5 A. The value of the mall?

6 Q. Yeah.

7 A. No, it is not.

8 Q. Well, then how would the -- how would the debtors ever be  
9 able to measure the diminution if you don't know the starting  
10 point?

11 MR. STROCHAK: Objection, Your Honor.

12 THE COURT: Sustained.

13 MR. STROCHAK: Thank you.

14 THE COURT: Next question. Next questioner, come  
15 forward, please.

16 MR. ROSEN: I'm getting there, Your Honor. Give me a  
17 second.

18 Q. You testified regarding Exhibit 7?

19 A. Yes.

20 Q. Now, Exhibit 7 assumes, does it not, the proceeds of the  
21 DIP loan is proceeds of cash --

22 A. Yes, it --

23 Q. -- as a source of cash, correct?

24 A. It does assume that the company is able to enter into a  
25 DIP that provides 400 million of gross financing.

1 Q. Okay, but right now we don't have a DIP, and between now  
2 and the time that a DIP is provided --

3 THE COURT: Is there a question --

4 MR. ROSEN: Yeah.

5 Q. What does the --

6 THE COURT: -- or are you --

7 Q. What does the abs -- how does the absence of the DIP  
8 affect your numbers?

9 A. Over what time period?

10 Q. Over the next week.

11 A. Well, over the next week we would not receive the 196  
12 million of net proceeds -- or 192.6; we would not receive that.  
13 You know, this is -- this is not the right exhibit to show what  
14 a weekly result is. This is a April-through-December.

15 THE COURT: If your point is can the debtors do  
16 without the DIP for the next week, I think the record so  
17 indicates.

18 MR. ROSEN: No, I'm not concerned about doing without  
19 the DIP. I'm concerned about being adequately protected  
20 without the DIP. And I'd like, really, someone to explain to  
21 me what the adequate protection is if we can't measure a  
22 benchmark.

23 THE COURT: All right. We'll let counsel do that.  
24 Next question.

25 MR. ROSEN: No, let's have counsel do that.

1 THE COURT: All right, in due course.

2 MR. ROSEN: I just want to ask --

3 THE COURT: Sit down, sir.

4 MR. ROSEN: -- wait, one other question.

5 THE COURT: Sit down.

6 MR. ROSEN: I can't ask another question?

7 THE COURT: No. You're done.

8 MR. ROSEN: Why am I done?

9 THE COURT: You're finished because I said so.

10 MR. ROSEN: Oh, okay. Well, then I reserve my  
11 rights, Your Honor.

12 THE COURT: You have your rights. Next questioner.

13 MR. ROSEN: Your Honor, we're reserving till Tuesday.

14 THE COURT: Well, everybody's reserving till Tuesday.

15 MR. MEYERS: As am I, Your Honor. My only comment  
16 was my understanding is that the documents underlying the  
17 summary, which was Exhibit 1, is something that I'll get over  
18 the weekend, which I appreciate. And that's it. Thank you.

19 THE COURT: I think there are several parties who are  
20 looking for that information, and they absolutely should get  
21 it.

22 MR. MEYERS: Mr. Holtzer asked me to clarify. As to  
23 my properties, the three that I have identified --

24 THE COURT: Yes.

25 MR. MEYERS: -- to him, and the answer is yes. Thank



1 you, Judge.

2 THE COURT: Anyone else? All right. Do you want to  
3 ask that one more question, Counsel? Come forward and ask one  
4 more question. I thought you were finished. You several times  
5 stopped. Come forward and ask your other question.

6 (Pause)

7 FURTHER CROSS-EXAMINATION

8 BY MR. ROSEN:

9 Q. Could you tell me how much cash my particular debtor is  
10 going to be sending into the consolidated account over the next  
11 week?

12 A. I cannot, sitting here right now.

13 Q. Is that information available to you today? I'm not  
14 asking you if you recall the number, but have you developed  
15 that information?

16 A. We do have information on a property-by-property basis.  
17 The -- we may not have it on a weekly basis.

18 Q. Do you have it on a monthly basis?

19 A. Yes.

20 Q. One other question. Pre-petition, you've testified that  
21 it was the case, correct me if I'm wrong, that the debtor  
22 maintained separate ledgers with respect to money coming in and  
23 out of each of the debtors on a property-by-property level, is  
24 that correct?

25 A. I don't think that is a correct characterization of what I

1 said.

2 Q. Or would you like to correct me?

3 A. What I said is that individual debtors have ledgers. On  
4 those ledgers, there's an intercompany account which records  
5 the activity between various legal entities.

6 Q. So Fox River, for example, would have an account  
7 reflecting whether it is a net giver or a net taker, if you  
8 will, to the upstream, correct?

9 A. Yes, they would.

10 Q. And would that be reflected as an account receivable from  
11 the parent if it's a net giver?

12 A. If it is a net giver, it would have a -- it would be, in  
13 effect, a receivable from the parent.

14 Q. And, in fact, the debtor in that instance would have been  
15 making loans upstream, is that not correct?

16 MR. STROCHAK: Objection, Your Honor.

17 THE COURT: Sustained.

18 MR. STROCHAK: Calls for a legal conclusion.

19 MR. ROSEN: He can't testify to whether that's a  
20 loan?

21 THE COURT: I sustained the objection. Next  
22 question. You don't have to argue with me or with him.

23 MR. ROSEN: I'm not ar -- I don't want to argue with  
24 anyone, Judge.

25 THE COURT: Objection sustained.

1 MR. ROSEN: I'm just trying to do a job here.

2 THE COURT: Next question.

3 Q. Do the books record it as a loan receivable?

4 A. I'm not sure.

5 Q. You're not sure?

6 A. It's shown as an intercompany. That's not a loan. It's  
7 not a -- it's an intercompany balance on a ledger statement.

8 Q. Okay.

9 MR. ROSEN: Thank you.

10 THE COURT: Anyone else? All right.

11 MR. STROCHAK: No redirect, Your Honor.

12 THE COURT: All right.

13 Thank you. You may step down --

14 THE WITNESS: Thank you.

15 THE COURT: -- subject to -- I'm sure you'll come  
16 back on Tuesday for further examination to the extent  
17 necessary.

18 THE WITNESS: Looking forward to it.

19 THE COURT: All right. I have a request by the  
20 debtors that I rule on cash collateral today and a request by a  
21 number of parties that I postpone that ruling. And I have a  
22 request by the debtors that I set a deadline with regard to the  
23 submission of competing DIP proposals. I think those are the  
24 two outstanding issues before me today.

25 MR. STAMER: Your Honor, I don't mean to interrupt

1 you.

2 THE COURT: No, you can interrupt, but --

3 MR. STAMER: What we're trying to do, Your Honor, and  
4 I hope the Court appreciates this, is to make sure that  
5 whatever the deadline is, that the principal parties-in-  
6 interest are going to participate and they're not going to be  
7 locked out of the process by virtue of the deadline.

8 What may make sense, Your Honor, is to take a five-  
9 minute adjournment. And I don't want to extend this any longer  
10 than needed. We can talk to the debtor; we can talk to the  
11 bidders. I believe their representatives are actually in the  
12 courtroom. And then maybe we can come up with an agreement as  
13 to the way in which we all think it should proceed.

14 THE COURT: All right. I think that's probably a  
15 good idea. Take a ten-minute adjournment on procedural issues  
16 of any type. And then I'll hear from any party who wishes with  
17 regard to outstanding issues.

18 MR. STAMER: Thank you very much, Judge.

19 THE COURT: Yes.

20 MR. HOLTZER: Your Honor, just one moment. Before we  
21 close the record, there is one correction to the record that  
22 counsel for Pershing Capital would like to make.

23 THE COURT: All right.

24 MR. LEAKE: Good afternoon, Your Honor. Paul Leake,  
25 Jones Day, on behalf of the proposed DIP lender this morning,

1 Pershing Square Capital Management. Earlier, Your Honor, I had  
2 told you that our commitment letter had -- would terminate  
3 today at 5 o'clock. Sometime in the earlier hours of the  
4 morning this morning, a revision was asked for by the debtors  
5 to amend that provision, and then it was made. And the  
6 commitment signed based on that amendment had not reached me  
7 before I left the office to come straight -- to come here. And  
8 the termination provision reads that the commitment terminates  
9 on the earlier of 5 p.m. on the day immediately following the  
10 entry date, defined as "Entry of an Order" -- so as of right  
11 now, not relevant as to the earlier date -- or June 1 if the  
12 funding date shall not have occurred by that date. So I wanted  
13 to clarify the record, Your Honor, a request by the debtor made  
14 last night to which we agreed to. And I wanted to make sure I  
15 corrected that on the record.

16 THE COURT: So the date for both proposals, if I may  
17 use that term, is June 1. And when does the Goldman Sachs  
18 concession go away? Is that in June as well? I gather that if  
19 Goldman Sachs is paid off by a certain date, there's a  
20 concession?

21 UNIDENTIFIED SPEAKER: June 1, Your Honor.

22 THE COURT: June 1 also. All right. At least we  
23 have a consistent date.

24 MR. LEAKE: Your Honor --

25 THE COURT: You have a further correction?

1 MR. LEAKE: The debtor would like -- the debtor would  
2 like me to read it into the record, Your Honor, which I am  
3 perfectly happy to do. "Our commitment hereunder will  
4 terminate upon the earlier of (a) 5 p.m., New York Time, on the  
5 day immediately following the entry date, unless accepted by  
6 you at or prior to such time," that was a clarification they  
7 wanted, "and (b) June 1, 2009 if the initial funding date shall  
8 not have occurred on or prior to such date." The document  
9 speaks for itself. Thank you, Your Honor.

10 THE COURT: Yes, sir?

11 MR. KELSEY: Can I just make a quick comment?

12 THE COURT: Yes. Just so the parties on the phone  
13 can hear you, come to the microphone.

14 MR. KELSEY: Thank you. Good afternoon, Your Honor.  
15 Matt Kelsey, Gibson Dunn --

16 THE COURT: Speak a louder, please.

17 MR. KELSEY: Good afternoon. Matt Kelsey, Gibson,  
18 Dunn & Crutcher, on behalf of Farallon Capital, which was the  
19 DIP lender but currently maybe isn't the DIP lender. I agree  
20 with Mr. Stamer's recommendation. I just wanted to make one  
21 point for the Court just to give us some context here, and that  
22 is at least fifty percent of entities that are going to fu --  
23 were going to fund into this DIP from the West Coast had flew  
24 out here for this hearing today fully expecting to have that  
25 DIP approved. We've heard deadlines mentioned by the debtor

1 like 10 a.m. tomorrow morning while these people are flying  
2 back home. We think that's a little tight. Given the  
3 circumstances and the amount of travel, we think, at a minimum,  
4 we would get into sometime next week.

5 THE COURT: Well, why don't we -- I'll take that  
6 break. I think the parties should discuss it. I think they  
7 need to get some sleep very badly. And we do have a little bit  
8 of time. And this may be one of those occasions where a little  
9 more time is beneficial rather than less.

10 UNIDENTIFIED SPEAKER: Thank you, Judge.

11 (Recess from 4:25 p.m. until 4:58 p.m.)

12 THE COURT: Be seated. All right, we'll go back on  
13 the record in General Growth Properties.

14 Ms. Goldstein?

15 MS. GOLDSTEIN: Thank you, Your Honor. Thank you for  
16 allowing us a somewhat more than ten-minute recess, but it was  
17 worthwhile because hopefully it's precedent in this case that  
18 we actually have a consensus among the debtor, the secureds and  
19 the unsecureds and the prospective DIP lenders. I can't  
20 guarantee that for everything that goes forward here, but we  
21 have it today.

22 THE COURT: I hope it's more than on your joint  
23 desire to get out of this room this afternoon.

24 MS. GOLDSTEIN: However, we --

25 THE COURT: You're united on the basis upon which

1 we're going to close the record today.

2 MS. GOLDSTEIN: We're united on this basis, but --

3 THE COURT: All right.

4 MS. GOLDSTEIN: -- we're also united on, you know,  
5 having a collaborative process to get to the end of DIP  
6 negotiations. And so -- I will work backwards, Your Honor,  
7 because this, in part, depends on your calendar. We would  
8 like, if possible, to have a hearing on Wednesday. I  
9 personally would like it Wednesday morning.

10 THE COURT: Wednesday?

11 MS. GOLDSTEIN: And we have no objection to Wednesday  
12 morning, Your Honor --

13 THE COURT: All right, Wednesday it is.

14 MS. GOLDSTEIN: -- if it's --

15 THE COURT: I will --

16 MS. GOLDSTEIN: -- compatible with your calendar.

17 THE COURT: I have a confirmation hearing which has  
18 been noticed for 10, but why don't we be -- we'll be optimistic  
19 and say 10:30.

20 MS. GOLDSTEIN: That's very good, Your Honor. It  
21 must be an uncontested confirmation, we hope.

22 THE COURT: Well, it's uncontested as many matters  
23 today have been uncontested, but there are some loose ends.

24 MS. GOLDSTEIN: Okay --

25 THE COURT: Uncontested but with loose ends.



1 MS. GOLDSTEIN: Okay. Well, good. We'll -- 10:30.

2 Thank you very much, Your Honor.

3 THE COURT: All right.

4 MS. GOLDSTEIN: So given that --

5 THE COURT: So if you have to wait, I hope it won't  
6 be for very long.

7 MS. GOLDSTEIN: Okay. And given that, Your Honor, we  
8 would like your guidance as to by when on Tuesday we should  
9 file the filed -- the completed DIP agreement.

10 THE COURT: Well, I think parties have to have an  
11 opportunity to read the form of the agreement, and it may be a  
12 matter of some complexity. I haven't -- we're not setting  
13 bidding guidelines --

14 MS. GOLDSTEIN: No, we're not, Your Honor.

15 THE COURT: -- or anything of that nature. So I  
16 think it's really up to the debtor to establish a procedure  
17 that is as fair as possible considering the number of  
18 interested parties. But it would seem to me that if we're  
19 going to have a hearing at 10:30 -- or shall I say 11? Maybe  
20 11? Or maybe I should make it 11 --

21 MS. GOLDSTEIN: Yeah.

22 THE COURT: -- on Wednesday. The parties should be  
23 able to know where we are by noon on Tuesday. Is that -- I see  
24 some heads nodding yes.

25 MS. GOLDSTEIN: Yes, Your Honor. I think that is

1 exactly what we were hoping you would say.

2 THE COURT: Well, you can always suggest it. That's  
3 what you were hoping. Noon on Tuesday.

4 MS. GOLDSTEIN: Okay. And --

5 THE COURT: Now, how we get there, number one, I do  
6 think I'm going to order all parties to get some sleep tonight.  
7 Can I do that?

8 MS. GOLDSTEIN: You can, Your Honor, and we would  
9 like --

10 THE COURT: And without any effect, I'm sure. But I  
11 assume there'll be some work done over the weekend to clarify a  
12 few -- the intersection of the DIP loan and the secured  
13 lenders' rights can be easy or it can be difficult, as you  
14 know, and --

15 MS. GOLDSTEIN: We understand.

16 THE COURT: Okay.

17 MS. GOLDSTEIN: And, Your Honor, on that note, what  
18 we would like to propose -- and all of the prospective DIP  
19 lenders are in the courtroom, at least the ones that have  
20 participated to date; we do believe they will probably be doing  
21 some thinking and working, and I assume calls will occur over  
22 the weekend. But we would like to set a time on Monday,  
23 probably noon or 1 o'clock -- I'll say 1:00 -- at the offices  
24 of Weil, Gotshal & Manges where these prospective DIP lenders  
25 would have submitted their bids. They've heard a lot of

1 information today about what they can do that could help the  
2 situation. And then we would expect to have the committee at  
3 our office, secured lenders' representatives at our office, and  
4 the prospective bidders, and we'll have an iterative discussion  
5 with the parties during the course of the afternoon. And  
6 hopefully -- we expect we would select a DIP lender by early  
7 evening so that we can have something on file Tuesday morning.  
8 And I think that is the procedure the debtor and the committee  
9 and the secureds and the prospective lenders have all agreed  
10 to.

11 (Pause)

12 MS. GOLDSTEIN: Your Honor, some of the lenders have  
13 raised the question, and this will be part of the discussions,  
14 I'm sure, either over the weekend or in connection with their  
15 bids, of making 503(b) claims for their expenses. We do  
16 appreciate that some of these lenders have put a lot of time  
17 into this, including legal time.

18 THE COURT: 503(b) or 506 --

19 MS. GOLDSTEIN: 5 -- no --

20 THE COURT: -- (b)?

21 MS. GOLDSTEIN: -- substantial contribution, legal  
22 fees.

23 THE COURT: Oh, the DIP lenders --

24 MS. GOLDSTEIN: The DIP lenders.

25 THE COURT: -- not the --

1 MS. GOLDSTEIN: Yes. No, we're not talking about --

2 THE COURT: -- secured lenders.

3 MS. GOLDSTEIN: No. No. I apologize, Your Honor.

4 THE COURT: They seem to be on 506 grounds.

5 MS. GOLDSTEIN: They're caught up in 506(c), but

6 the --

7 THE COURT: Eventually.

8 MS. GOLDSTEIN: The prospective DIP lenders are  
9 interested in that, and I think that's something we're willing  
10 to discuss with them. But I can't make any -- obviously,  
11 that's something for the Court to decide ultimately, but we'll  
12 be discussing whether the debtors will be supporting something  
13 along those lines.

14 MR. STAMER: If I could supplement that, Judge,  
15 without contradicting what counsel said. We think the bidders,  
16 to date, have provided value. And we are encouraging people to  
17 show up on Monday. And we in the company -- we need to talk to  
18 the committee -- are considering being supportive of 503(b)  
19 applications for bidders that show up, that make bids and that  
20 do not prevail in the process. So, just so the record's clear,  
21 so the bidders understand where we're coming from --

22 THE COURT: My --

23 MR. STAMER: -- ultimately it's up to the Court, we  
24 all understand that, but it's designed to be a welcoming and  
25 collaborative process.

1 THE COURT: Well, Mr. Zirinsky cited Northwest once  
2 today. I'm not going to cite it, but since he may have some  
3 knowledge that others don't, you can certainly consult with him  
4 and with Mr. Masumoto on my 503(b) attitude in another case.  
5 And each case is different, and I recognize that. Each of the  
6 400 cases we have here is different too, and that will be taken  
7 into account.

8 MR. STAMER: Your Honor, just an administrative  
9 announcement. We're going to meet, with your permission, with  
10 secured lenders in your conf --

11 THE COURT: You don't -- oh, you don't need my  
12 permission to meet, but you certainly may use the conference --

13 MR. CROSS: We said that we can --

14 THE COURT: I'll get you a bigger room if you need  
15 it.

16 MR. CROSS: That's fine. It's plenty big. So that  
17 we can decide who would be the representatives who are at Weil,  
18 because the invitation has it that fifty people show up. It's  
19 just going to be a small group.

20 THE COURT: That -- I think that's a -- that would be  
21 a major step forward. Anyone else? All right, well, perhaps I  
22 should reserve any further comments on cash collateral until  
23 next week. I don't know exactly what issues are remaining.  
24 There are issues relating to the Fashion Mall, I gather.

25 MS. GOLDSTEIN: Well, yes, they believe they are

1 different, Your Honor.

2 THE COURT: And -- I mean, I have this -- I should  
3 make the following comments on use of cash collateral. All  
4 parties are receiving non-default interest. Only one party is  
5 being asked to, at this time, to credit that interest against  
6 principal rather than against the actual accrued interest.  
7 Along with that adequate protection, there is a lien on the  
8 cash that is -- or the net cash that's going up into the cash  
9 concentration account.

10 The parties had various expectations pre-petition  
11 with regard to the treatment of their debt and the treatment of  
12 their debtor by itself. However, this case does involve many  
13 other entities, and it involves the interests of unsecured  
14 creditors, of enormous amounts and of equity holders as well.

15 I'm going to leave the specifics until next week.  
16 The parties have a right to make their case. But I would  
17 simply ask the parties to consider some of the basic principles  
18 of bankruptcy law that are Bankruptcy 101. I say that because,  
19 as difficult as this weekend may be for you, I have to read  
20 exams. And I didn't give my students this problem but I do  
21 think some of the issues we're dealing with are Bankruptcy 101.  
22 I mean, lenders are entitled to adequate protection. Pre-  
23 petition provisions of loan agreements in the nature of  
24 covenants and conditions are breached in Chapter 11. The most  
25 important of such conditions that are breached in Chapter 11 is

1 the condition that payment be made in accordance with the terms  
2 of the loan agreement. And that's breached in most cases; in  
3 many cases far more substantially than in this case where the  
4 debtor is proposing to pay interest at the non-default rate.

5 Parties reserve their right to seek interest of the  
6 default rate at the end of the case; the debtors make that  
7 clear in their papers. I can hear argument on Wednesday or at  
8 a later time if it only involves a few parties as to payment of  
9 interest at the default rate currently. But I would just note  
10 that a couple of parties want me to find that each of the  
11 individual debtors are single-asset real estate cases. And one  
12 party has moved for that relief. I don't quite understand  
13 where that gets us in this case. Even if they were, it's an  
14 interesting question. 362(d)(3) provides that one of the  
15 debtors' recourses in the event that we have a single-asset  
16 real estate case is to pay interest currently at what rate? At  
17 the non-default rate. Congress has adjusted, in this way, the  
18 rights of lenders, if we really have a single-asset real estate  
19 case, and the rights of debtors and those interested in the  
20 debtors' success: unsecured creditors, equity holders and  
21 others.

22 So if parties want to go forward on the single-asset  
23 real estate side of things and get a decision, I will consider  
24 it in due course. But it seems to me that it's not going to  
25 really advance anybody when the debtor has agreed to pay

1 interest at the non-default rate currently or an amount  
2 equivalent to interest at the non-default rate currently. And  
3 you reserved the right if they should later change their  
4 position because of exigencies.

5 Similarly, with regard to the breach of rights as  
6 to -- rights of lenders to separateness and the covenants, I  
7 have at least one motion for relief from the stay; I have a  
8 motion to dismiss. If I have to schedule them on Wednesday,  
9 I'll schedule them for a very near date because they can  
10 impinge on other parties' rights. But I would simply ask the  
11 parties to consider whether they really seek, at this point in  
12 time, a relief of this nature. There's some hyperbole, at  
13 least I view it as hyperbole, in a brief I have from a group  
14 called the Commercial Mortgage Securities Association and the  
15 Mortgage Bankers Association speaking of systemic violation of  
16 parties' risks and systemic problems in the real estate  
17 industry. And we do have some systemic problems in the real  
18 estate industry, or so I read in the papers perhaps coming from  
19 the other direction. This debtor is trying to deal with them  
20 in the market that we have. And so far it appears that the  
21 numbers would indicate it can deal with those problems far more  
22 successfully than many of the other parties who find their way  
23 into this court.

24 So I think it's very important that each lender have  
25 its right to seek specific relief. I don't know if there were



1 situations, as this brief seems to indicate but very vaguely,  
2 of separate corporate directors and others. And if there are  
3 motions to be brought, they can be brought. But I think that  
4 if we look at some fairly standard provisions of Bankruptcy  
5 101, we would find that there is a way in these cases to  
6 reconcile the interests of the secured lenders with the  
7 interests of the debtors in protecting their assets for the  
8 benefit of all creditors.

9 So I think I've gone as far as I should today. I  
10 think we made a lot of progress, and I really appreciate those  
11 who have made that effort. And I hope that it will continue  
12 tomorrow after the parties have gotten some sleep tonight.  
13 Thanks very much.

14 ALL: Thank you, Your Honor.

15 THE COURT: And we're adjourned until Wednesday at  
16 10:00.

17 ALL: 11.

18 THE COURT: At -- I beg your pardon, 11:00.

19 MS. GOLDSTEIN: Your Honor --

20 (Gap in audio)

21 MS. GOLDSTEIN: -- motions that you approved.

22 THE COURT: Please.

23 MS. GOLDSTEIN: And we will circulate a tenant  
24 leasing -- the leasing practices motion --

25 THE COURT: Circulate a tenant's --

1 MS. GOLDSTEIN: -- order, excuse me.

2 THE COURT: Yeah, one for the tenant improvements,  
3 and then --

4 MS. GOLDSTEIN: A bridge order or --

5 THE COURT: Yes.

6 MS. GOLDSTEIN: -- on the cash collateral.

7 THE COURT: Oh, I should also -- before we stop, I  
8 will so order the record as to a continuation of use of cash  
9 collateral on the same basis as the prior order from today, at  
10 least until Wednesday of next week.

11 MS. GOLDSTEIN: Thank you.

12 MR. STROCHAK: Your Honor, and cash management as  
13 well?

14 MS. GOLDSTEIN: And cash management?

15 THE COURT: And cash management. Does anyone wish to  
16 be heard on that? All right. Thank you. Good night.

17 MR. STROCHAK: Thank you.

18 (Whereupon these proceedings were concluded at 5:16 p.m.)  
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I N D E X

T E S T I M O N Y

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Debtors	2	2-year cash flow forecast		100, 8
Debtors	4	Chart of the GGP's expected liquidity position on a consolidated basis		100,10
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R U L I N G S

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C E R T I F I C a T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

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LISA BAR-LEIB

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Date: May 12, 2009